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PRESENT STATE OF THE LAW.

THE

SPEECH

OF

HENRY BROUGHAM, Esq., M.P.,

IN THE

HOUSE OF COMMONS,

ON

THURSDAY, FEBRUARY 7, 1828,

ON HIS MOTION,

THAT AN HUMBLE ADDRESS BE PRESENTED TO HIS MAJESTY,

PRAYING

THAT HE WILL GRACIOUSLY BE PLEASED TO ISSUE A COMMISSION
FOR INQUIRING INTO THE DEFECTS OCCASIONED BY TIME
AND OTHERWISE IN THE LAWS OF THIS REALM,
AND INTO THE MEASURES NECESSARY
FOR REMOVING THE SAME.

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TO THE

MOST NOBLE

WILLIAM HARRY VANE,

MARQUESS OF CLEVELAND,

&c. &c. &c.

WHOSE RANK, WEALTH, AND INFLUENCE, ARE CHIEFLY TO BE ENVIED
FOR THE USE WHICH HE MAKES OF THEM IN FURTHERING
THE INTERESTS OF HIS COUNTRY,

THIS REPORT

IS INSCRIBED BY

THE EDITORS.

ADVERTISEMENT.

THE Speech of Mr. Brougham, on the Present State of the Law, embracing an almost unlimited number of technical details, and presenting a solid foundation for one of the most important inquiries ever instituted, has appeared to demand a more careful revision than is usually bestowed upon Speeches upon general political questions. The present Edition has, therefore, been accurately prepared, not only from a comparison of the published Reports of the Speech with the Notes of the Editors, who were present at the debate, but with the great advantage of the corrections of Mr. Brougham himself, which that gentleman has given as fully as was compatible with his numerous and important avocations. For this kindness the Editors are sincerely grateful. With the object of increasing the value of the Speech, as a work of professional reference, it was intended to add Notes and an Appendix; but from the uncommon length to which the Report itself extends, this design has been dropped.

March 17th, 1828.

THE TABLE.

PAGE

INTRODUCTORY MATTER . . . . . 1 to 5
Equity omitted 2
Criminal Law . . . . . ib.
Commercial Law 3
Law of Real property to a certain extent . . 4
Administration of Justice the great end of all Government ib.

I. CONSTITUTION OF OUR COURTS OF JUSTICE 5 to 43

i. SUPERIOR COURTS OF WESTMINSTER HALL . . 5 to 21
Conflict of King's Bench and Common Pleas . 5
Competition of the three Courts not real . . 7
Monopoly of Advocates in Common Pleas . . 8
——— of Attornies in Exchequer . . . ib.
King's Bench overloaded with business . . . 9
Ineffectual attempts to relieve it 10
Evils of the Three Judge Court 11
Bail and Chamber business 12
Necessity of more Judges 13
Real innovation of adhering to old practices . . 14
Two proposals for lightening and equalizing the business of the Courts 15
Expediency of paying Judges in a small proportion by fees 17
Evils of party considerations influencing the choice of Judges 18

ii. ADMINISTRATION OF JUSTICE IN WALES . . . 21 to 24
Evils of the system 21
Remedy proposed . . . . . ib.
Digression concerning Moveable Terms and Circuits 22

iii. CIVIL LAW COURTS . . . . . 24 to 27
Bad mode of paying the Judges 25
Bad mode of appointing them 26
Bad Constitution of the Court of Delegates . . ib.

iv. COURTS OF APPEAL IN THE PRIVY COUNCIL . . 27 to 34
Vast extent of Colonial Jurisdiction . . . 28
Needless aggravations of the necessary evils of ignorance and distance 29
Composition, sittings, and business of the Court . ib.
Case of Ramnâd 31
Jury Trial recommended for East Indian Settlements 32
Political and Legal advantages 34

PAGE

v. JUSTICES OF THE PEACE . . . . . 34 to 43
Defects of the system as to Appointment and Removal . 35
Clerical Magistrates 36
Licensing 37
Game Laws 39
No responsibility and no revision . . . 40 to 43
Court of Quarter Sessions supreme . . . 40
Service not wholly gratuitous 41

II. STATE OF THE LAW . . . . . 43 to 120

INTRODUCTORY MATTER . . . . . 43 to 51
Different Laws in different places 44
Different Laws for different persons . . . 46
Inequality to Crown and Subject where Equality is pretended . . . . . ib.
Instance of its operation 47
Inequalities avowed—under five heads . . . 48
Instances of their operation . . . . . 48 to 50

i. MEANS OF PREVENTING NEEDLESS LITIGATION . 51
Principles 52
Practice 54
Fines and Recoveries . . . . . ib.
Cases of Bankrupt 55
——— Tenant in tail . . . . . ib.
——— Feme Covert . . . . . ib.
Absurd fiction of recompense in value . . . 56
Strict Settlement 57
Statute of Uses . . . . . ib.
Equitable Interest 58
Equitable and Legal Jurisdiction 59
Ejectment 60

ii. MEANS OF PREVENTING LITIGATION BEING NEEDLESSLY PROLONGED 60
Principles 61
Practice 62
Remedies 64

iii. COMMENCEMENT OF SUITS . . . . . 65 to 68
Principles 65
Practice . . . . . ib.
Arrest on Mesne Process . . . . . ib.
Outlawry to compel appearance 67

iv. PLEADING . . . . . 68 to 84
Praises of it by Lords Coke and Mansfield . . 68
Superiority of Ancient Pleading 69

PAGE.

Principles . . . . . ib.
Practice 70
(1.) Generality—Count—examples in Assumpsit and Trover 71
——— in Trespass 72
Plea—examples, N. A. and N. G. . . 73
Panegyric of Mr. J. Blackstone . . 74
(2.) Inconsistency 75
(3.) Repugnancy and Multiplicity . . . . ib.
(4.) Inconsistent Restraints on Pleading . . 77
(5.) Restraint on Demurrer 78
(6.) Variance 79
Digression concerning Stamps . . . . ib.
Instances of Evils from the System . . . 80

v. EVIDENCE . . . . . 84 to 103
INTRODUCTORY MATTER . . . . . 84 to 88
Fourfold advantage of Jury Trial 85
Testimony of Parties . . . . . ib.
(1.) Incompetency of Witnesses from interest . . 88
(2.) Written Evidence improperly dispensed with . 90
(3.) Admission of Deceased Persons' Books . . ib.
(4.) Examination of Witnesses 91
Test improperly excluded . . . . ib.
Exclusion of other Tests 92
(5.) Exclusion of Witnesses by religion . . . 93
(6.) Presumption as to weight of Evidence . . 94
(7.) Construction of Written Evidence assumed by Courts 95
Rules of Construction framed by them . . ib.
Wills and Deeds 96
Shelley's Case, and Perrin *v.* Blake . . ib.
Debts released without intending it . . . 97
Wills revoked without intending it . . . ib.
——— by things done to confirm them 98
——— Powers . . . . ib.
Contingent Uses and Executory Deeds . . ib.
Remedies 99
Appendix to this head—Law of Limitations . . 100
Its Defects—how to be remedied 102
Church Rights . . . . . ib.

vi. TRIAL . . . . . 103 to 106
Principles 103
Practice . . . . . ib.
Remedies 104
Trial of Real Actions 105
Instances 106

PAGE

vii. EXECUTION . . . . . 106 to 110
Principles 106
Practice 107
Exemption of Land . . . . . ib.
——— of Personalty 108
Real Innovation of the Law by leaving it as at present 109
Unequal distribution of Assets 109
viii. APPEAL . . . . . 110 to 112
COSTS . . . . . 111 to 113
CONCLUSION . . . . . 113 to 120
Mercantile Law defective in part 113
General Reform safest 114
Precedents of Law Reform 115
Law Authorities for it . . . . . ib.
Attempts in the Commonwealth 116
Attempts after the Restoration 117
Prospects in the present day 118

SPEECH,

&c.

In rising to address the House upon one of the most important subjects that can possibly be submitted to the Legislature, I feel at the same time deeply impressed with the conviction, that it is also one of the most difficult, and certainly the largest, that could engage its attention. I am aware that I stand engaged to bring before you the whole state of the Common Law of this country, (the Common Law, I call it, in contradistinction to Equity,) with the view of pointing out those defects which may have existed in its original construction, or which time may have engendered, as well as of considering the remedies appropriate to correct them. Nothing, I do assure you, at all strengthens and bears me up under the pressure of this vast and overwhelming burthen, but a conviction of the paramount importance, nay, the absolute necessity, of no longer delaying the inquiry, or postponing the needful amendments; and the intimate persuasion I feel, that I shall be able so to deal with the subject, (such is my deep veneration for all that is good in our judicial system, and my habitual respect for those in whose hands the administration of it is placed,) as neither to offend the prejudices of one class, nor vex the personal feelings of another. But I feel a confidence, also, which is unspeakable, resting on another ground. I come not here to raise cavils before men ignorant of the details and niceties of the profession I belong to, and who, in that unavoidable ignorance, would be unfit judges of their merits; I am determined to avail myself in no respect of their situation, or of the absence of the learned Body of the Profession, for the sake of a futile and pitiful triumph over what is most valuable in our jurisprudence. I am comforted and confirmed in my resolution, by the accidental circumstances that have joined me, in some sort, to the administration of the law in which I have

had so considerable an experience. I have seen so much of its practical details, that it is, in my view, no speculative matter whether for blame or praise. I pledge myself, through the whole course of my statements, as long as the House may honour me with its attention, in no one instance to make any observation, to bring forward any grievance, or mark any defect, of which I am not myself competent to speak from personal knowledge. I do not merely say, from observation as a bystander; I limit myself still further, and confine myself to causes in which I have been council for one party or the other. By these considerations, emboldened on the one hand, and on the other impressed with a becoming sense of the arduous duty I have undertaken in this weighty matter, I will, without further preface go on, in the first place, to state the points which I intend to avoid.

I shall omit Equity in every branch, unless where I may be compelled to mention it incidentally, from its interference with the course of the common law; not that I think nothing should be done as to Equity, but because in some sort it has been already taken up by Parliament. A Commission sat, and inquired into the subject, and produced a Report, received, though not yet acted upon. The Noble and Learned Lord, who presides in the other House, has announced his intention of proposing a Bill, founded on that Report. I may also add, that the subject has, to his own great honour, and to the lasting benefit of the country, been for many years in the hands of my Honourable and Learned Friend, the Member for Durham (Mr. M. A. Taylor): it is still with him, and I trust his care of it will not cease.

For reasons of a like kind, I pass over the great head of Criminal Law. That inquiry, happily for the country, since the time when first Sir Samuel Romilly (a name never to be pronounced by any without veneration, nor ever by me without sorrow) devoted his talents and experience to it, has been carried forward by my Honourable and Learned Friend, the Member for Knaresborough (Sir James Mackintosh) with various success, until at length he reaped the fruit of his labours, and prevailed upon this House, by a narrow majority, to bend its attention towards so great a subject. On a smaller scale, on one indeed of a very limited nature,

these inquiries have been since followed up by the Right Honourable Gentleman who is now again Secretary of State for the Home Department. It is not so much for any thing he has actually done, that I feel disposed to thank him, as for the countenance he has given to the subject. He has power, from his situation, to effect reforms which others hardly dare propose. His connections in the Church and State render his services in this department almost invaluable. They have tended to silence the clamours that would otherwise have been raised against the reform of the law, and might possibly have proved fatal to it. If (which I do not believe) he intended to limit his efforts to what he has already accomplished; if he were disposed to say, "Thus far have I gone, and no further can I go with you," the gratitude of his country would still be due to him in an eminent degree, for having abashed the worst enemies of improvement by his countenance and support. But I trust he will again direct the energies of his mind to the great work of reformation, and bestow his exertions over a wider space.

Another reason for avoiding this part of the subject altogether, is to be found in the nature and objects of the Criminal Law. I do not think it right to unsettle the minds of those numerous and ignorant classes, on whom its sanctions are principally intended to operate. It might produce no good effects if they were all at once to learn, that the Criminal Law in the mass, as it were, had been sentenced to undergo a revision—that the whole Penal Code was unsettled and about to be remodelled.

I intend also to leave out of my view the Commercial Law. It lies within a narrow compass, and it is far purer and freer from defects than any other part of the system. This arises from its later origin. It has grown up within two centuries, or little more, and been formed by degrees, as the exigency of mercantile affairs required. It is accepted, too, in many of its main branches, by other States, forming a code common to all trading nations, and which cannot easily be changed without their general consent. Accordingly, the provisions of the French Civil Code, unsparing as they were of the old municipal law, excepted the law merchant, generally speaking, from the changes which they introduced.

Lastly, Sir, the law of Real Property forms no immediate subject of my present consideration; not that I shall not have much to propose intimately connected with it, and many illustrations to derive from it; but I am flattered with the hope that the Secretary for the Home Department intends himself, on this subject, to bring forward certain measures, by which the present system will eventually undergo salutary alterations: And I cannot help here saying, that whatever the Criminal Law owes to the persevering and enlightened exertions of the late Sir Samuel Romilly, and of his successor, the Member for Knaresborough (Sir J. Mackintosh), I am sure an almost equal debt of gratitude has been incurred on the part of the law of Real Property, to the honest, patient, and luminous discussion which it has received from one of the first conveyancers and lawyers this country could ever boast of. My Honourable and Learned Friend (the Solicitor-General) opposite, and those Members of the House who are conversant with our profession, will easily understand that I can only allude to Mr. Humphreys.

With these exceptions, which I have now stated as shortly as I was able, and for which I shall offer no apology, because it was absolutely necessary that I should begin by making the scope of my present purpose understood, I intend to bring all the Law as administered in our Courts of Justice under the review of the House; and to this ample task I at once proceed. But I shall not enlarge, after the manner of some, on the infinite importance and high interest which belongs to the question, and the attention which it, of right, claims from us, whether we be considered as a branch of the Government, or as the Representatives of the people, or as a part of the people ourselves. It would be wholly superfluous; for every one must at once admit, that if we view the whole establishments of the country—the Government by the King, and the other Estates of the Realm,—the entire system of Administration, whether civil or military,—the vast establishments of land and of naval force by which the State is defended,—our foreign negotiations, intended to preserve peace with the world,—our domestic arrangements, necessary to make the Government respected by the people,—or our fiscal regulations, by which the expense of the whole is to be supported,—all shrink into nothing, when com-

pared with the pure, and prompt, and cheap Administration of Justice throughout the community. I will indeed make no such comparison; I will not put in contrast things so inseparably connected; for all the establishments formed by our ancestors, and supported by their descendants, were invented and are chiefly maintained, in order that justice may be duly administered between man and man. And, in my mind, he was guilty of no error,—he was chargeable with no exaggeration,—he was betrayed by his fancy into no metaphor, who once said, that all we see about us, King, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box. Such—the administration of justice—is the cause of the establishment of Government—such is the use of Government: it is this purpose which can alone justify restraints on natural liberty—it is this only which can excuse constant interference with the rights and the property of men. I invite you, then, Sir, to enter upon an unsparing examination of this mighty subject; I invite the House to proceed with me, first of all, into the different Courts—to mark what failures, in practice, are to be found in the system, as it was originally framed, as well as what errors time has engendered by occasioning a departure from that system; and afterward to consider whether we may not, safely and usefully, apply to those defects remedies of a seasonable and temperate nature, restoring what is decayed, if it be good—lopping off what experience has proved to be pernicious.

I. i. In the first place, let us proceed to the Courts in Westminster-hall, and observe the course pursued in them. The House is aware that, whatever may have been the original of our three great Common Law Courts, they now deal with nearly the same description of suits; and that, though the jurisdiction of each was at first separate and confined within very narrow limits, their functions are now nearly the same. The jurisdiction of the Court of King's Bench, for example, was originally confined to Pleas of the Crown, and then extended to actions where violence was used,—actions of trespass by force; but, now, all actions are admissible within its walls, through the medium of a legal fiction, adopted for the purpose of enlarging its authority, that every person sued

is in the custody of the Marshal of the Court, and may, therefore, be proceeded against for any personal cause of action. Thus, by degrees, this Court has drawn over to itself actions, which really belong to the great forum of ordinary actions between subject and subject, as its name implies, the Court of Common Pleas. The Court of Common Pleas, however, in its exertions for extending its business, was not so fortunate as its rival: for, though it made a vigorous attempt, under Lord Chief Justice North, to enlarge its sphere, it never was able to obtain cognizance of the peculiar subject of King's Bench jurisdiction—Crown Pleas.

I hope, Sir, the House will allow me, for the sake of a little divertissement in the midst of so dry a matter, to state the nature of the contest between the two Courts, as described by Roger North in his biography of the Lord Keeper,—a work of amusement with which I am sure my Learned Friend (the Solicitor-General) is as well acquainted as he is with the subtleties of his profession.

It appears from his account, that the Courts of King's Bench and Common Pleas had quarrelled as to their respective provinces; for he says, "The Court of Common Pleas had "been outwitted by the King's Bench, till his Lordship came "upon the cushion, and that by our artifice in process called "*ac etiams*. His Lordship used the same artifice in the pro-"cess of his Court, where it was as good law as above. But "Hale exclaimed against it, and called it altering the process "of law; which very same thing his own court had done, and "continued to do every day *." In another place he tells how, "The two courts being upon terms of competition, the King's "Bench outwitted the Common Pleas;" and how the latter "invented a shift" against the King's Bench. "There," says he, "the Common Pleas thought they had nicked them. But "the King's Bench was not so sterile of invention as to want "the means of being even with that device;" and he shows how—concluding with this remark—"The late Chief Justice, "Sir Orlando Bridgman, and his officers of the Common "Pleas, gave this way of proceeding by the King's Bench very "ill language, calling it an arbitrary alteration of the form of

* North's Lives of Lord Keeper Guilford, &c., vol. i. p. 130.

"legal process, and utterly against law. But the losers might "speak; they got nothing else; and the *Triccum in leye* "carried it for the King's Bench; which Court, as I said, "ran away with all the business *."

The Exchequer has adopted a similar course; for, though it was originally confined to the trial of Revenue cases, it has, by means of another fiction—the supposition that every body sued is a debtor to the Crown, and further that he cannot pay his debt because the other party will not pay him,—opened its doors to every suitor, and so drawn to itself the right of trying cases that were never intended to be placed within its jurisdiction.

The first state of the Courts being that of distinct jurisdiction, then of course this separation of provinces was praised; afterwards, all distinction became obsolete, and then the conflict and competition were as much commended: and with far greater reason, if the competition were real; but it is almost purely speculative. In the first place, the Court of Common Pleas shuts its doors to many practitioners of the law, by requiring that a certain proportion of fees should be advanced at a much earlier stage in the cause than is customary in the other Courts. For who is it that must advance this money? Either the attorney himself, if it be his own cause, must pay the money out of his own pocket, or, if he is acting as agent for a country practitioner, he must begin by laying out the money long before he can draw upon his employer for reimbursement, and he is not, in all cases, sure of being repaid for those advances. In the second place, clients and their attornies are induced not to carry causes into the Common Pleas, by the strict monopoly that exists in the advocates of that Court. I have every wish to speak with all respect of the learned persons who there engross the practice; but as, no doubt, solicitors will have their favourites, and as, possibly, their clients may also have their favourites, the practice not being open to all barristers, prevents many suitors from resorting to a court where no one can be employed for them, at least in term time, except he be a sergeant; and great as the learning of that body is known to be, well founded as their reputation is for skill

* North's Lives of Lord Keeper Guilford, &c., vol. i., p. 203.

and for zeal, as well as for legal knowledge, yet the exclusive right which they exercise operates to keep away business from the Court; and thus it has happened both that other advocates seldom practise there at Nisi Prius where the Court is open, and that much fewer suits are carried to the Common Pleas than to the King's Bench. The causes which thus operate to shut the doors of that Court must be removed, before it can hope to have its fair share of practice.

The Exchequer, in like manner, has its drawbacks, though they operate in another way. There is one reason why, as at present constituted, it cannot do much business, or have the high reputation which it ought to enjoy; I mean the mixture of various suits which are cognizable in it. It is, in fact, a court of all sorts—of equity and of law—of revenue law and of ordinary law—of law between subject and subject, as well as of law between the subject and the Crown. This makes suitors, seeing the business done in so many different ways, come to the conclusion that it is not well done in any. I do not by any means assert that this is a correct opinion, at the present time; because the judges and the barristers employed in that court do not, I am convinced, yield to any body of professional men in their knowledge of equity and law. There are to be found on its bench highly distinguished equity and common lawyers; men of known legal talents, and the greatest experience both in Chancery practice, in Nisi Prius, and in Criminal law. In what, therefore, I have said, I refer merely to that species of public opinion, which, whether right or wrong, has been engendered by the constitution of the Court; I refer, also, to the natural tendency of a jurisdiction, thus open to such a variety of jurisprudence, to degenerate into inaccuracy, or want of effective skill in each department. But there is another and more obvious reason why this court does not obtain so much business as the others; I mean the limited number of attornies belonging to and allowed to practise in it. If there is cause to complain, as I have been doing, of the monopoly among the advocates attached to the Common Pleas, there is much more cause for a similar complaint touching the attornies in the Exchequer. The practitioners in that court are four attornies and sixteen clerks, and none others are allowed to practise there; if a country attorney wishes to take his cause thither, the only mode by

which he can do so is to employ one of the privileged attornies of the court, and divide with him the profits of the suit. It is needless to say that such a system has, of necessity, a tendency at once to shut the doors of the Court of Exchequer against suitors.

What, then, is the natural consequence of those restrictions which prevent suitors from approaching the Courts of Common Pleas and Exchequer? Why, it is this—wherever there is but little business done in any court, those in power are induced not to place the strongest Judge in that situation; then, the small portion of business to be done renders the Judge less fit for his office; and so, by action and re-action, while the little business makes the Bench and the Bar less able, the inferior ability of the Court still further reduces that little business. I am here speaking of past times, but with a view, however, to what may occur at a future period. We may not always have the Bench so well filled at it is at present. The time may come when, if a Judge were to be made, in consequence of political influence, who was known not to be capable of properly filling the office, it might be said by those who supported him, "Oh, it does not matter—send him to the Court of Exchequer—he will have nothing to do there." Thus the small portion of business transacted—the suspicion originating from the general mixture of suits carried on in different ways, that the business is not well done,—the monopoly of attornies, together with several other causes, occasions this Court to be the least frequented of any; indeed, it has now scarcely any thing to engage its attention. The judges do not sit for more than half an hour some mornings, and there are hardly ever on the paper more than six or seven causes for trial after term; a dozen would be considered a large entry; when I well remember Lord Ellenborough having 588 set down for trial in London only; and the present Lord Chief Justice lately had on his paper no less than 850 untried causes. I mention this to support my proposition, that there is not really a free competition between the different Courts. To say, in the circumstances which I have stated, that suitors have a free access to all the Courts equally, is a fiction—an assertion adapted to what ought to be, perhaps to what is intended, but certainly not founded on the fact.

Experiments have been tried to lighten the business of the Court of King's Bench; but I do not find that any of them have answered the purpose for which they were instituted. The first of these attempts was made in the year 1821, when it was arranged that the Chief Justice should sit in one court, and a Puisne Judge in another, at the same time; but never did any arrangement fail more completely. The Court in which the Puisne Judge sat remained almost idle, while the other Court was as constantly preferred, and nearly as much overloaded as before. Little else was effected but a great inconvenience both to practitioners and suitors, by the passing and repassing from Court to Court. In fact, it is not in the power of the Courts, even were all monopolies and other restrictions done away, to distribute business equally, as long as the suitors are left free to choose their tribunal. There will always be a favourite Court; and the circumstance of its being preferred tends to make it more deserving of preference; for if the favour towards it began in mere caprice, the great amount of business draws thither the best practitioners, to say nothing of judges; and the better the Court, the greater will be its business. The same action and reaction will operate favourably, which I before showed in its unfavourable effects where a Court was declining—*Possunt quia posse videntur.* The experiment of 1821, having failed entirely, was not repeated.

Another attempt has subsequently been made to relieve the Court of King's Bench from the pressure of Term business, which must always bear a proportion to the Nisi Prius causes. This system is still going on under the bill brought into the House by the present Chancellor, and of which, though he was induced to patronize it officially when Solicitor-General, I have reason to believe he never much approved. As this arrangement is compulsory, the client having no choice, it cannot well fail; but I heartily wish that it had failed, for it has done much mischief, and is certainly one of the worst changes that has ever taken place. It is true, the great pressure of business requires that something should be done; but it is equally true that the right thing has not been adopted; for, where the King's Bench sits, with the Chief Justice presiding —where the suitors resort—where the bar is mustered—

where the public attend—where all the council and attornies appear—where the business is disposed of, as it ought to be, gravely and deliberately, with the eyes of mankind, with the eyes of the bar, as well as of the world at large, turned on the proceedings,—would not every one point to that as the place in which all important legal questions ought to be decided? Would not any one, on the other hand, say, if another Court were constituted in a sort of back room, where three judges were sitting—where the only persons present, beside the judges, were the council and attorney employed on either side of the cause that was pending—where there was no audience, and the public eye was entirely directed not *upon* but *from* that to the other Court—would not any one, I ask, declare, that a Court so circumstanced was the place in which the trifling business alone should be transacted? These, I think, would be but natural conclusions; and yet if the matter be stated exactly the other way, it will be far nearer the truth. Of the really important business, as regards both its difficulty and importance to the law, and, indeed, to the suitor, a very large proportion is done in that back room, and before those three judges; it is done in a corner, and, I may say, disposed of behind people's backs, with only the attendance of the attorney and barrister on each side, or, at most, with the presence of these and of the practitioners waiting for the next cause; and as the Court is not frequented by the public any more than the profession, the business may certainly be said to be transacted without due publicity and solemnity. Thus we see, that by this arrangement, while the most interesting matter is overlooked, trifling business and points of no importance are brought forward with all possible observation:—a motion for judgment as against the casual ejector, which is a motion of course,—a motion to refer a bill to the Master to compute principal and interest,—for judgment, as in case of a nonsuit,—and a thousand others, either of course or of the most trifling moment, are heard, with the utmost publicity, before the whole Court—before the whole Bar—before the whole body of attornies—before the whole public—all of which might be settled by the three judges in a corner, or by any one of them, or by any one of their clerks. The consequence is, that much time is lost to the full Court, while the most important business,—special argu-

ments, raising the greatest legal questions,—new trials, involving both matters of law and fact affecting large interests;—and the crown-paper, comprehending all the questions from Sessions, are obliged to be heard in the private and unsatisfactory manner I have described. I wish this system to be remedied, because it is a great and growing evil.

It may be said that the judges have not time to do the business. I deny that: there is time. Six hours a day, well employed, would be amply sufficient for all purposes. Let them come down to the Court at ten o'clock in the morning and remain till four—a period of six hours—and the business may be done. But the system is at present extremely ill-arranged, and I will show how, without having any one to blame for it. The judges do their utmost, but they cannot remedy the evil without your aid. Let us see how their time is employed. They are supposed to come to the Court at ten o'clock, and to remain there till four. Surely this time may safely be pronounced to be sufficient for the transaction of their business. Then why have they not these six hours? There are two reasons for it:—the one is, that bail must be taken by a judge. Mr. Justice Bayley, no longer ago than last Monday, was occupied the whole day in the Bail Court; and this morning Mr. Justice Holroyd was not able to get away till twelve o'clock. I cite these instances of late occurrence, Sir, that you may see how closely I desire to keep by the actually existing state of the facts; but every week furnishes examples as well as the present. Thus, then, we see that in one case a whole day was lost, as far as regards a full Court, and in another two hours, merely for the purpose of attending to trifling business, which might just as well be transacted by a commissioner, say a barrister of ten years' standing. The other reason why the judges' time is misspent, arises from Chamber business, which consists in the learned judges, the profound lawyers, the great magistrates, whose names I have made free to mention, sitting at Sergeants' Inn to hear the squabbles of attornies, and the clerks of attornies among themselves, for barristers rarely attend: this takes them in rotation away from the Court at three o'clock; so that, in fact, while their nominal time is from ten to four, they are only, on the average, really present from eleven or twelve to three, by which means, instead of transacting business during six hours,

the time is reduced to three, or at most four hours per day. And what, Sir, is the inference from all this? Obvious enough, certainly: for though it may be fairly contended, that the business of the Bail Court could be transacted by a commissioner, it may, perhaps, be doubted whether the Chamber practice does not require a judge to perform it, considering the points to be disposed of, and the persons to be controuled. There may, therefore, be a sufficient excuse for the arrangement, as matters stand at present, and yet a remedy may be necessary, as it may certainly be found in changing the circumstances. For my own part, I frankly confess that I am one of those who do not see the paramount excellence that some suppose to be vested in the number twelve; although Lord Coke has spoken of it with a degree of rapture like that of the algebraist, when he dwells upon the marvellous powers of three or of nine. Twelve appears to be the number, in his view, connected with all that is important and venerable, either sacred or profane, ancient or modern; but as I, unfortunately, do not possess the lights by which he was guided, I cannot help thinking that fourteen is a much better number than twelve, although it may not be so good for division; and although I cannot quote the fourteen Apostles, or the fourteen Tables, or the fourteen wise men. It will, indeed, divide by seven, which is more than can be said of twelve; but I rely not upon that superiority: it has another arithmetical quality of more importance. Though neither so divisible nor so beautiful, nor so classical as twelve, it contains two more units than twelve—beats it by two beyond all doubt or cavil; and that superiority recommends it for my present purpose. If twelve was beautiful in the days of Lord Coke, fourteen must now, I fear, on this account take its place: for how any one can suppose that twelve men are able to do now, what they were only enough to do centuries ago, is to me matter of astonishment; now, that they have seven or eight hundred causes to try, where they formerly had but thirty or forty, and when we know, that in the time of Lord Mansfield, in the late reign, sixty was reckoned a fair entry.

This, Sir, is one of the illustrations which I would give to expose the heedless folly of those who charge the Bench and the Bar with causing all the delays in legal proceedings. How can it be expected that twelve judges can go through the increased

and increasing business now, when the affairs of men are so extended and multiplied in every direction, the same twelve, and at one time, fifteen, having been not much more than sufficient for the comparatively trifling number of causes tried two or three centuries ago? But there is a far more unthinking and more dangerous prejudice to which the same topic is a complete refutation,—I mean the outcry against innovation, set up as often as any one proposes those reforms rendered necessary by the changes that time, the great innovator, is perpetually making.—*Tempus novator rerum.* Those who advise an increase of the Judges beyond their present number are not innovators. The innovators are, in truth, those who would stand still while the world is going forward,—who would only employ the same number of labourers while the harvest has increased tenfold,—who, adhering to the ancient system of having but twelve Judges, although the work for them to do has incalculably increased, refuse to maintain the original equality, the pristine fitness of the means to the end, the old efficiency and adequacy of the establishment; but they are not innovators who would apply additional power when the pressure exceeds all former bounds,—who, when the labour is changed, would alter the force of workmen employed, and thus preserve the proportions that originally existed in the judicial system,—who would most literally keep things as they were, or return them to their primitive state by restoring and perpetuating their former adaptation and harmony. The advantage of the addition I am recommending will become the more evident when I have to consider the Welch Judicature, which I believe to be the worst that was ever established. Why should not the two Judges be received amongst the others, and divide the Welsh circuits with the old ones? Not that I mean they should always take those circuits, but each might take them in his turn, as each in his turn might sit in the Courts of King's Bench and Common Pleas, and at the Old Bailey, beside dividing with the chiefs the sittings at Nisi Prius*.

That the King's Bench paper is now far too heavy, there

* The three Puisne Judges thus sitting in Banc, the fourth would each term take Bail and Insolvents and Common motions in the morning, and Chamber business afterwards; he would also take the Sittings in Term, a serious incovenience at present.

cannot be a doubt, and so it will always be. No one Judge can get through the mass of causes entered in the King's Bench, trying them patiently, and really hearing them to an end. Depend upon it, when more have been tried in the same time, they have been half heard, and forced to compromise or reference. Now, if you will have two Judges sitting at *Nisi Prius* at once, each of them taking a particular class of trials,—the one confining himself to the heavy business, and the other to bills of exchange, promissory note cases, and undefended causes generally,—the whole business of the Court could be got through both thoroughly and with despatch; but, as the law now stands, it is utterly impossible for any man, in days consisting of no more than twenty-four hours, and labouring for eleven months in the year, to dispose of the business before him. I say eleven months; for the Court, with the exception of a day or two of respite at Easter, and a week at Christmas, sat for above eleven months last year, taking the Circuits as one of the year's work.

Another obvious distribution might be made without having two Judges sitting together in one court. As all real actions have their domicile in the Common Pleas, actions which, in their nature, partake of real actions, as ejectments, trespass to try title, and so forth, might be carried there too. Other suits might be susceptible of a similar classification, as if actions respecting tithes, which are not frequent, bills of exchange, and promissory notes, were carried into the Court of Exchequer. The Lord Chief Baron is allowed, by the 57th of Geo. III., to sit in Equity and to hear alone all causes and all motions in equity; but he never, in fact, does hear motions, although certainly no lawyer ever sat in that Court more fitted to dispatch any branch of Equity practice than is the present head of the Exchequer. Were he confined to the Equity side, and were another Judge, a common lawyer, appointed to preside on the law side of that Court, you would have two effective Courts, instead of one not very effective for either Law or Equity. The Court of Chancery would be materially relieved by this arrangement; while the double good would be found, of the business being better done both on the Bench and at the Bar, from that expertness which ever attends the division of labour; and of seasonable relief

being afforded to both the judges and practitioners of the King's Bench, who would be restored to something of the leisure, at least the moderate professional employment, so favourable to the liberal pursuits and that unfettered study of jurisprudence, which have always formed the most accomplished lawyers.

There are two observations, Sir, which I have to make relative to the Judges generally, and which I may as well state now I am upon that subject. I highly approve of paying those learned persons by salaries, and not by fees as a general principle; but, so long as it is the practice not to promote the Judges, which I deem essential to the independence of the bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting place, to become less strenuous in their exertion than they would be if some little stimulus were applied to them. They have an irksome and an arduous duty to perform; and, no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition growing with their years to do as little as possible. I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. I say a very moderate amount, a very small addition to their fixed salary, would operate as an incentive; and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the length of a suit, or the number of its stages, but that the amount should be fixed and defined once for all, in each piece of business finally disposed of. I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the reformers of the law; but I give the suggestion as the result of long reflection, which has produced a leaning in my mind towards some such plan. I throw out the matter for inquiry, as the fruit of actual observation, and not from any fancy that I have in my own head; but I may also mention, that some friends of the highest rank and largest experience in the profession, agree with me in this point,—men who are among the soundest and most zealous supporters of reform in the Courts of Law.

The other general observation that I have to make, with respect to the Judges, is of a nature entirely different from the last which I have submitted to the House. The great object

of every Government, in selecting the Judges of the land, should be to obtain the most skilful and learned men in their profession, and, at the same time, the men whose character gives the best security for the pure and impartial administration of justice. I almost feel ashamed, Sir, to have troubled you with such a truism; but the House will presently see the application I am about to make of it. Sorry am I to say, that our system of judicial promotion sins in both these particulars. Government ought to fill the bench with men taken from among the most learned lawyers and most accomplished advocates—men who have both knowledge of the depths of jurisprudence and sagacity to apply it—men who, from experience as leading advocates, possess the power of taking large and enlightened views of questions, and of promptly seizing the bearings of a case. There cannot be a greater error than theirs who fancy that an able advocate makes a bad judge; all experience is against it. The best judges in my time, with the exception of the present Lord Chief Justice, than whom no man can discharge his office more excellently and efficiently, have all of them been previously distinguished in the profession as advocates. But not only should the choice be unconfined by the legal acquirements and professional habits of the practitioner; there ought not to be, in choosing Judges from the bar, any exclusion or restriction. He alone ought to be selected, in whom talent, integrity, and experience most abound, and are best united. The office of Judge is of so important and responsible a nature, that one should suppose the members of Government would naturally require that they should be at liberty to make their selection from the whole field of the profession—that they would themselves claim to have the whole field open to their choice. Who could believe that a Ministry would not eagerly seek to have all men before them, when their object must be to choose the most able and accomplished? But although this is obvious and undeniable, and although the extension of the Minister's search cannot fail to be attended with the highest public advantage, as well as the greatest relief to him in performing his trust, is it the case that any such general and uncontrouled choice is exercised? Is all the field really open? Are there no portions of the domain excluded from the selector's authority?

True, no law prevents such a search for capacity and worth! True, the doors of Westminster Hall stand open to the Minister! He may enter those gates, and choose the ablest and *the best man there*. Be his talent what it may, be his character what it may, be his party what it may, no man to whom the offer is made will refuse to be a Judge. But there is a custom above the law—a custom, in my mind, "more honoured in the breach than the observance," that party, as well as merit, must be studied in these appointments. One half of the Bar is thus excluded from the competition; for no man can be a Judge who is not of a particular party. Unless he be the known adherent of a certain system of government,—unless he profess himself devoted to one scheme of policy,—unless his party happen to be the party connected with the Crown, or allied with the Ministry of the day, there is no chance for him; that man is surely excluded. Men must be on one side of the great political question to become judges; and no one may hope to fill that dignified office, unless he belongs to the side on which courtly favour shines; his seat on the bench must depend, generally speaking, on his supporting the leading principles of the existing administration.

But perhaps, Sir, I may be carrying this distinction too far, and it may be said, that the Ministers do not expect the opinions of a Judge should exactly coincide with theirs in political matters. Be it so; I stop not to cavil about trifles; but, at all events, it must be admitted that, if a man belongs to a party opposed to the views of Government; if, which the best and ablest of men, and the fittest for the bench, may well be, he is known for opinions hostile to the Ministry, he can expect no promotion—rather let me say, the country has no chance of his elevation to the bench, whatever be his talents, or how conspicuously soever he may shine in all the most important departments of his profession. No one, I think, will venture to deny this; or, if he do, I defy him to show me any instance in the course of the last hundred years, of a man, in party fetters, and opposed to the principles of Government, being raised to the bench. No such thing has taken place that I know of. Never have I heard of such a thing, at least in England; though we have, perhaps, known instances of men who have changed their party, to arrive at the heights

of their profession. But on this subject, desirous throughout of avoiding all offence, I will not press—well, I do not wish to say a word about it.

In Scotland, it is true, a more liberal policy has been adopted, and the Right Honourable Gentleman opposite has done himself great honour by recommending Mr. Gillies, Mr. Cranstoun, (now Lords Gillies and Corehouse,) and Mr. Clark, (Lord Eldin,) all as well known for party-men there as Lord Eldon is here *; though, unfortunately, their party has been what is now once more termed, the wrong side; but all men of the very highest eminence among the professors of the law. Now, when I quote these instances in Scotland, I want to see examples of the same sort in England; for, however great my respect for the law and the people of the North may be, I cannot help thinking, that we of the South too, and our jurisprudence, are of some little importance, and that the administration of justice here may fairly call for some portion of attention. But, Sir, what is our system? If, at the present moment, the whole of Westminster Hall were to be called upon, in the event of any vacancy unfortunately occurring among the Chief Justices, to name the man best suited to fill it, to point out the individual whose talents and integrity best deserved the situation—whose judicial exertions were the most likely to shed blessings on his country—can any one doubt for a moment whose name would be echoed on every side? No; there could be no question as to the individual to whom would point the common consent of those most competent to judge; but, then, he is known as a party man, and all his merits, were they even greater than they are, would be in an extolled by his profession, and in vain desiderated by his country. I reprobate this mischievous system, by which the empire loses the services of some of the ablest, the most learned, and most honest men, within its bounds.

And here let me not be supposed to blame one party more than another; I speak of the practice of all governments in this country; and, I believe, when the Whigs were in office, in 1806, they

* Two other instances should be added,—the learned and venerable Lord Chief Commissioner, who has had the signal happiness of presiding over the introduction of Jury Trial into his native country, and Mr. Cathcart, Lord Alloway.

did not promote to the bench any of their political opponents; they had no vacancies in Westminster Hall to fill up, but in the Welsh judicature they pursued the accustomed course. Now what is the consequence of thus carrying party-principles into judicial appointments? The choice of Judges is fettered by being confined to half the profession; so that you have less chance of able men; and those you get are of necessity partisans, and, therefore, less honest and impartial. Why should the whole bench be Ministerial or Tory? No man can desire it to be so, for the purposes of judging over a community, far, very far, from being Ministerial or Tory. Yet it must be so, unless vacancies should occur during those visits of Whig Ministries "few and far between," when once in a quarter of a century power alights upon that party, and then spreads its wings and flies from them in a few months. Does not this arrangement instil into the minds, both of expectant judges and of men already on the bench, a feeling of party fatal to strict justice in political questions? I speak impartially, but unhesitatingly on this point, for it is perfectly notorious, that now-a-days, whenever a question comes before the bench, whether it be upon a prosecution for libel, or upon any other matter connected with politics, the Council at their meeting take for granted that they can tell pretty accurately the leaning of the Court, and predict exactly enough which way the consultation of the Judges will terminate, though they may not always discover the particular path which will lead to that termination. While the system I complain of continues, while you suffer it to continue, such a leaning is its necessary consequence. The Judges have this leaning—they must have it—they cannot help having it—you compel them to have it;—you choose them on account of their notoriously having it at the Bar; and you vainly hope that they will suddenly put it off, when they rise by its means to the Bench. On the contrary, they know they fill a certain situation, and they cannot forget by whom they were placed there, or for what reason.

There is no doubt that the present Judges will always discharge their functions with all the impartiality that any man can expect from them; but I speak without reference to individual habits or prejudices—I speak of impressions which it is natural to expect must exist, where circumstances all conspire

to create them; I speak, too, I must be allowed to say, quite disinterestedly. I cannot take the situation of a Judge—I cannot afford it. I speak not for myself, but for the country, because I feel it to be a matter of the deepest importance; and from what I have seen of the Right Honourable Gentleman opposite (Mr. Peel), I really do hope to see this matter much more maturely weighed, than it has heretofore been.

ii. I am afraid that I have already tired the House with the length of these details; but I must now take my leave, for a time, of Westminster Hall, and beg of you to mark, in the next place, the manner in which the law is administered in Wales. Why should Wales, because it happens to be termed the Principality, have the rights of property, and the personal privileges of the inhabitants, dealt with by different Judges, and almost by a different system from that which is established in England? In England you have the first men—men of the highest education and experience—to sit in judgment on life and property. In Wales you have as Judges, I will not say inferior men, but certainly not the very first, nor in any respect such as sit upon what Roger North calls the "cushion in Westminster Hall." I shall here show three great defects requiring a remedy most imperatively. Oftentimes, those persons have left the bar, and retired to the pursuits of country gentlemen. I do not say that they are, for that reason, unfit for the office of Judge, but still they cannot be so competent as men in the daily administration of the law, and forming part of our Supreme Courts. In some cases they continue in Westminster Hall—which is so much the worse,—because a man who is a Judge one half the year, and a rrister the other, is not likely to be either a good Judge or a good Barrister. But a second and a greater objection is, that the Welsh Judges never change their circuits. One of them, for instance, goes the Carmarthen circuit, another the Brecon circuit, and a third the Chester circuit—but always the same circuit. And what is the inevitable consequence? Why, they become acquainted with the gentry, the magistrates, almost with the tradesmen of each district, the very witnesses who come before them, and intimately with the practitioners, whether council or attornies. The names, the faces, the characters, the histories, of all those persons are familiar to them; and out of this too great

knowledge grow likings and prejudices which never can by any possibility cast a shadow across the open, broad, and pure path of the Judges of Westminster Hall. Then again they have no retiring pensions; and the consequence is, they retain their salaries long after they have ceased to discharge, properly, the functions for which they receive them. Now mark the result of all this. On one of the Welsh circuits, at the last Spring Assizes, there were set down no more than forty-six causes for trial; and how many does the House think were disposed of? Only twenty; and of the twenty-six made remanets, are some that had stood over from the preceding Assizes. It is evident enough what should be done here. If any of the Judges of the Principality have become, from the extreme pressure of business on the one hand, or from any physical cause on the other, inadequate to the discharge of the business which comes before them, pension them off—if they be barristers yet remaining in Westminster Hall, and not fit to be raised to the Bench, pension them off too: sure I am, that theirs will be the cheapest pension, nay, the most beneficial to the giver, "being twice blessed," which has ever been bestowed. I verily think that the Principality would itself cheerfully pay this first cost of a better system. At all events, add two Judges to your present number, and let them take, with the other twelve, their turn and share in the business of the country. Let the Principality of Wales be divided into two Circuits, and then you will have the work well done, and quickly done, especially if you transfer the Equity jurisdiction to the two Courts of Westminster. In addition to this, from the accession to the present number of Judges, the existing difficulties arising from the Bail Court and the Chamber practice will be done away.

And here, before passing to another head of judicature, the Times of the Circuits require a word or two. Not, perhaps, that this is of so much importance as the other defects I have already noticed, or shall presently touch upon; but it regards classes of great importance in themselves, judges, barristers, and solicitors; and it touches also, in no little degree, the convenience of the community at large. I should be most glad to see that folly,—for really I cannot call it by any other name,—that absurd and vexatious folly of regulating Easter Term by means of the *moon*, done away with. It is said by many that this

would be difficult to reform. I see no such difficulty in the matter. Let the Law Returns be made certain, and leave the moveable feast to the Church. I have no wish to interfere with the times and seasons of the Church; let those be regulated as you please; but let this inconvenience in the Law be remedied, by making, for Easter and Trinity terms, like those for Michaelmas and Hilary, the returns on some certain days. I remember that when the late Mr. Erskine brought in a bill, in 1802, to fix Easter Term, a learned Judge delivered himself in print against the dangerous innovation; and some persons, alarmed by him, exclaimed, "Only imagine the horror of attempting to change Easter Term, when all Christians throughout the world have at present the unspeakable comfort of knowing that they are keeping this great festival upon one and the same day." For my part, I have no wish to deprive them of this comfort, admitting it, as I do, to be unspeakable. The day upon which Good Friday falls may be determined as heretofore, that is, by the period of the full moon; by the same *certain varying* rule may Easter Sunday be fixed for all clerical purposes; but temporal business ought not to be be sacrificed to these ideas of some undefined spiritual consolation. There is no inconvenience in Easter being moveable, but there is a very great inconvenience in making the Law Returns moveable. Why not, then, let the Feasts of the Church remain changeable as heretofore, and the Terms of the Courts, little enough connected with sacred things, fall at a stated period? Let it be counted, for example, from Lady-day, which is always on the 25th of March. But why, indeed, must we continue to count from Saints' days, now that we have happily a very Protestant country, more especially under the government of the present Commander-in-Chief? Why preserve any Romish folly of this sort, or keep up a mere remnant of popery? Let Easter Term always begin on the 10th of April, or on the 5th, and the inconvenience will cease. It is the foolishest of vulgar errors to suppose, that, by how much the more you vex and harass the professors of the law, by so much the more you benefit the country. The fact is quite the reverse: for by these means you make inferior men, both in rank, in feelings, and in accomplishments, alone follow that profession out of which the judges of the land must be appointed. I should rather say, that by how much the

more you surround this renowned profession with difficulties and impediments, calculated only to make it eligible for persons of mere ordinary education, and mere habits of drudgery, who otherwise would find their way to employment in tradesmen's shops, or at best in merchants' counting-houses—by so much the more you close it upon men of talent and respectability, and prevent it from being the resort of genius and of liberal accomplishment. I apprehend, therefore, that the convenience of the Bar is a matter which the Legislature ought never to lose sight of, where it clashes not with the advantage of the suitor. The having the Terms which are moveable (Easter and Trinity), and the Circuit, and the Long Vacation, earlier by four or five weeks in one year, and later by four or five weeks in another, is a most serious inconvenience in itself, and quite unnecessary upon any principle. Only observe how hard the present system bears, for instance, upon those who, like myself, frequent the Northern Circuit. It happened to me that I did not get home till the 20th of September last year, having repaired to London on the 5th of October the year before; so that I was engaged in my profession for eleven months and a half, and having been gratified, out of the twelve months, by exactly one fortnight's vacation for needful repose. When I should have been obliged again to bend my steps towards Guildhall, appointed to open on the 9th of October, I naturally enough joined those who signed a requisition to my Lord Tenterden, entreating him to defer the sittings. His Lordship most handsomely expressed his willingness to meet the wishes of the Gentlemen of the Bar, kindly returning the affectionate respect which all who practise in his court bear to his person. He stated his satisfaction at being able to accommodate us, by sitting on Tuesday the 16th, instead of Tuesday the 9th, so that we obtained a week, for which we were thankful. My Lord observed, that in the state of his paper he could grant us no more; indeed, such is his resolution manfully and honestly to despatch his business, that he seems to take as much interest in his work as others do in their relaxation.

iii. I now pass to the Civil Law Courts; and their constitution I touch with a tender, and, I may say, a trembling hand, knowing that, from my little experience of their practice, I am scarcely competent to discourse of them; for I profess to speak only from such knowledge as I have obtained

incidentally by practising in the two Courts of Appeal, the High Court of Delegates and the Cock-pit, where I have been occasionally associated with the Civilians. The observations I have to make on this part of the subject resolve themselves, entirely, into those which I would offer upon the manner in which their Judges are appointed and paid. In the first place, I would have them better paid than they are now, a reform to which I would fain hope there may be no serious objection on their part, averse, as I know them, generally, to all change. I think they are underpaid in respect of the most important part of their functions. The Judge of the Court of Admiralty, who has the highest situation, or almost the highest, among the Judges of the land (for there is none of them who decides upon questions of greater delicacy and moment, in a national view, or involving a larger amount of property,)—this great dignitary of the law has 2,500*l.* a-year salary only. The rest of his income is composed of fees, and these are little or nothing during peace. But, then, in time of war, they amount to seven or eight thousand per annum. I profess not to like the notion of a functionary, who has so many calls, as the Judge of the Admiralty Court, for dealing with the most delicate neutral questions—for drawing up manifestos and giving opinions on those questions, and advising the Crown in matters of public policy bearing on our relations with foreign states;—I like not, I say, the notion of such a personage being subject to the dreadful bias (and, here, again, I am speaking on general principles only, and with no personal reference whatever) which he is likely to receive, from the circumstance of his having a salary of 2,500*l.* per annum only, if a state of peace continue, and between ten or eleven thousand a year, if it be succeeded by war. I know very well, Sir, that no feeling of this kind could possibly influence the present Noble Judge of that Court; but I hardly think it a decent thing to underpay him in time of peace, and still less decent is it, to overpay him at a period when the country is engaged in war. I conceive that it may not always be safe to make so large an increase to a Judge's salary dependent upon whether the horrors of war or the blessings of peace frown or smile upon his country—to bestow upon one, eminently mixed up with questions on which the continuance of tranquillity, or its

restoration when interrupted, may hinge, a revenue, conditioned upon the coming on, and the endurance of hostilities.

The other remark, which I have to offer on these Courts, I would strongly press upon the consideration of the House; it relates to the mode in which their Judges are appointed. Is it a fit thing, I ask, now, when Popery is no longer cherished or even respected, indeed hardly tolerated, among us—that one of its worst practices should remain, the appointment of some of the most eminent Judges in the Civil Law Courts by Prelates of the Church? I except, indeed, the Judge of the High Court of Admiralty, because his commission proceeds from the Lord High Admiral; but I speak of all those who preside in the Consistorial Courts—who determine the most grave and delicate questions of spiritual law, marriage and divorce, and may decide on the disposition by will of all the personalty in the kingdom. Is it a fit thing that the Judges in these most important matters should be appointed, not by the Crown, not by removeable and responsible officers of the Crown,—but by the Archbishop of Canterbury and Bishop of London, who are neither removeable nor responsible,—who are not lawyers,—who are not statesmen,—who ought to be no politicians,—who are, indeed, priests of the highest order, but not, on that account, the most proper persons to appoint Judges of the highest order? So it is in the province of York, where the Judges are appointed by the Archbishop; so in all other Consistorial Courts, where the Judges are appointed by the Bishops of the respective dioceses in which they are situated. From their Courts an appeal lies, it is true, to the Court of Delegates, in the last resort; but so far from this affording an adequate remedy, it is an additional evil; for I will venture to affirm, that the Delegates is one of the worst-constituted Courts which was ever appointed, and that the course of its proceedings forms one of the greatest mockeries of appeal ever conceived by man. And I shall demonstrate this to you in a very few words. The Court is thus formed:—You take three Judges from the Common Law Courts, one from each: to these you add some half dozen civil lawyers, advocates from Doctors' Commons, who the day before may have been practising in those Courts, but who happen not to have been in the particular cause, in respect of which the appeal has been

asserted. Now, only see what the consequence of this must be. The civilians, forming the majority of the delegates, are, of necessity, men who have no practice, or the very youngest of the doctors. So that you absolutely appeal from the three great Judges of the Civil and Maritime Courts, from the sentences of Sir William Scott, Sir John Nicholl, and Sir Christopher Robinson—of those learned and experienced men, who are to us the great luminaries of the Civil law—the venerated oracles best fitted to guide our path through all the difficulties of that branch of the science, and open to us its dark passages—you appeal from them to Judges, the majority of whom must, of necessity, be the advocates the least employed in the Courts where those great authorities preside, the most recently admitted to those Courts, and the most unqualified to pronounce soundly on their proceedings, if it were decent that they should pronounce at all; for, out of so small a Bar, the chances are, that the three or four eminent advocates have been employed in the case under appeal. Thus the absurdity is really much the same as if you were to appeal from a solemn and elaborate judgment, pronounced by my Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and Mr. Justice Littledale, to the judgment of three young barristers, called but the day before, and three older ones, who never could obtain any practice.

Sir, I have spoken of the Primate and his principal Suffragan; and I hope I need not protest, especially while I have the pleasure of addressing you, that in what I have said of the privilege belonging to the highest Dignitary in the Church, my observations were meant to be most remote indeed from every thing like personal disrespect; towards no persons in their exalted station do I bear a more profound respect than to both the distinguished Prelates I have named, well knowing the liberality of their conduct in exercising the powers I am objecting to, as all the country knows the extent of learning and integrity of character which have made them the ornaments of our hierarchy.

iv. I next come to speak of the Privy Council; a very important judicature, and of which the Members discharge as momentous duties as any of the Judges of this country, having to determine not only upon questions of Colonial law

In Plantation Cases, but to sit also as Judges, in the last resort, of all Prize Causes. The point, however, to which I more immediately address myself on this head is, that they hear and decide upon all our Plantation Appeals. They are thus made the supreme Judges, in the last resort, over every one of your foreign settlements, whether situated in those immense territories which you possess in the East, where you and a trading company together rule over not less than seventy millions of subjects; or established among those rich and populous islands which stud the Indian Ocean, and form the great Eastern Archipelago; or have their stations in those lands, part lying within the Tropics, part stretching towards the Pole; peopled by various castes differing widely in habits, still more widely in privileges, great in numbers, abounding in wealth, extremely unsettled in their notions of right, and excessively litigious, as all the children of the New World are supposed to be, both from their physical and political constitution. All this immense jurisdiction over the rights of property and person, over rights political and legal, and over all the questions growing out of such a vast and varied province, is exercised by the Privy Council unaided and alone. It is obvious that, from the mere distance of those colonies, and the immense variety of matters arising in them, foreign to our habits and beyond the scope of our knowledge, any judicial tribunal in this country must of necessity be an extremely inadequate court of review. But what adds incredibly to the difficulty is, that hardly any two of the colonies can be named which have the same law; and in the greater number the law is wholly unlike our own. In some settlements, it is the Dutch law, in others the Spanish, in others the French, in others the Danish. In our Eastern possessions these variations are, if possible, yet greater: while one territory is swayed by the Mohammedan law, another is ruled by the native or Hindu law, and this again, in some of our possessions, is qualified or superseded by the law of Buddha, the English jurisprudence being confined to the handful of British settlers, and the inhabitants of the three Presidencies. All those laws must come, in their turns, in review, before the necessarily ignorant Privy Councillor, after the learned doctors in each have differed. The difficulty thus arising of necessity from

our distance, an unavoidable incident to our Colonial Empire, may almost be deemed an incapacity, for it involves both ignorance of the law and unfitness to judge of the facts. But so much the more anxious should we be to remove every unnecessary obstacle to right judgment, and to use all the correctives in our power. The judges should be men of the largest legal and general information, accustomed to study other systems of law beside our own, and associated with lawyers who have practised or presided in the Colonial Courts. They should be assisted by a Bar limiting its practice, for the most part, to this Appeal Court; at any rate making it their principal object. To counteract, in some degree, the delays necessarily arising from the distance of the Courts below, and give ample time for patient inquiry into so dark and difficult matters, the Court of Review should sit frequently and regularly at all seasons. Because all these precautions would still leave much to wish for, that is no kind of reason why you should not anxiously adopt them. On the contrary, it is your bounden duty, among those countless millions whom you desire to govern all over the globe, not to suffer a single unnecessary addition to the inevitable impediments which the remote position of the seat of empire throws in the way of correct and speedy justice.

Widely different are our arrangements. The Privy Council, which ought to be held more regularly than any other Court, sits far less constantly than any, having neither a regular Bench nor a regular Bar. It only meets on certain extraordinary days—the 30th of January, the Feast of the Purification, some day in May, Midsummer-day, and a few others. I find that, on an average of twelve years, ending 1826, it sat in each year nine days, to dispose of all the appeals from all the British subjects in India; from our own Civil Courts, to the jurisdiction of which all our subjects are locally amenable, throughout the wide extent of the several Presidencies of Calcutta, Bombay, and Madras; to dispose of all the causes which come up to the three several native Courts of last resort, the Sudder Adawluts, from the inferior Courts of Zilla and Circuit, comprising all contested suits between the Hindoos, the half-caste people, and the Mahomedan inhabitants. But in the same nine days are to be disposed of all the appeals from Ceylon, the Mauritius, the Cape, and New Holland; from

our Colonies in the West Indies and in North America; from our settlements in the Mediterranean, and from the Islands in the Channel;—nine days' sittings are deemed sufficient for the decision of the whole. But nine days do not suffice, nor any thing like it, for this purpose; and the summary I have in my hand demonstrates it both by what it contains, and by what it does not. It appears that, in all those twelve years taken together, the appeals have amounted to but few in number. I marvel that they are so few—and yet I marvel not; for, in point of fact, you have no adequate tribunal to dispose of them; and the want of such a tribunal is an absolute denial of justice to the subjects of the Crown in those colonies. The total number is only 467; but, including about 50, which came from India and appear not to have been regularly entered, though they are still undisposed of, there are 517. Of these, 243 only have been disposed of; but only 129 have been heard, for the others were either compromised, from hopelessness owing to the delay which had intervened between the appeal and the sentence, or dismissed for want of prosecution. Consequently, the Privy Council must have heard ten or eleven appeals only by the year, or little more than one in the course of each day's sitting. Again, of the 129 which were heard and disposed of, no less than 56 were decided against the original sentences; which were altered, and, generally speaking, wholly reversed. Now, 56 out of 129 is a very large proportion, little less than one-half; and clearly shows that the limited number of appeals must have arisen, not from the want of cases where revision was required, but from the apprehension of finding no adequate court of review, or no convenient despatch of business. And that the sentences in the colonies should oftentimes be found ill-digested, or hasty, or ignorant, can be no matter of astonishment, when we find a bold Lieutenant-general Lord Chancellor in one Court, and an enterprising Captain President in another; and a worthy Major officiating as Judge-advocate in a third. In many of these cases, a gallant and unlearned Lord Chancellor has decided, in the Court below, points of the greatest legal nicety; and the Judges of Appeal, who are to set him right here, are chosen without much more regard to legal aptitude; for you are not to suppose that the business of

these nine days upon which they sit is all transacted before lawyers: one lawyer there may be, but the rest are laymen. Certainly a Right Honourable Gentleman whom I see opposite to me is there sometimes by chance, and his presence is sure to be attended with great advantage to us. Occasionally we see him or my Learned Friend, his predecessor (Mr. Abercromby), but this good fortune is rare; the Master of the Rolls alone is always to be seen there, of the lawyers; for the rest, one meets sometimes in company with him, an elderly and most respectable gentleman, who has formerly been an ambassador, and was a governor with much credit to himself in difficult times; and now and then a junior Lord of the Admiralty, who has been neither ambassador nor lawyer, but would be exceedingly fit for both functions, only that he happened to be educated for neither. And such, Sir, is the constitution of that awful Privy Council which sits at Westminster, making up, for its distance from the suitors, by the regularity of its sittings; and for its ignorance of local laws and usages, by the extent and variety of its general law learning: this is the court which determines, without appeal, and in a manner the most summary that can be conceived in this country, all those most important matters which come before it. For instance, I once saw property worth thirty thousand pounds sterling per annum, disposed of in a few minutes after the arguments at the bar ended, by the learned members of the Privy Council, who reversed a sentence pronounced by all the Judges in the Settlement, upon no less than nineteen days' most anxious discussion. Such a Court, whose decisions are without appeal, —irreversible, unless by act of Parliament—is the supreme tribunal which dispenses the law to eighty millions of people, and disposes of all their property.

I cannot pass from this subject without relating a fact which illustrates the consequences of the delays necessarily incident to such a jurisdiction. The Rance, or Queen of Ramnad, having died, a question arose among the members of her family, respecting the succession to the vacant Musnud (or throne,) and to the personal property of the deceased sovereign, as well as the territorial revenue. The situation of the country, as well as its population and wealth, render it a province of some note. It reckons four hundred thousand inhabitants, and it lies in

the direct road which the pilgrims from the south of India take to the sanctuary in the island of Remisseram, frequented by them as much as the Juggernaut is by those of the north. On the death of her Highness in 1809, proceedings commenced in the Courts below, upon the disputed succession; An appeal to the King in Council was lodged in 1814; it is still pending. And what has been the consequence of this delay of justice? Why, that the kingdom of Ramnad has been all this time in the keeping of sheriffs' officers, excepting the Honourable Company's peshcush, or share of the revenues, which, I have no manner of doubt, has been faithfully exacted to the last rupee. It is strictly in what amounts to the same thing as the custody of sheriffs' officers, having been taken, as I may say, in execution; or rather by a kind of mesne process, such as we have not in our law.

As the papers on the table, to which I have referred, shew so much fewer appeals from the Plantations than might have been expected, it is fit now to remind the House how equivocal a symptom this is of full justice being done. It is the worst of all follies, the most iniquitous, as well as the most mistaken kind of policy, to stop litigation, not by affording a cheap and expeditious remedy, but by an absolute denial of justice, in the difficulties which distance, ignorance, expense, and delay produce. The distance you cannot remove, if you would; the ignorance it is hardly more easy to get rid of: then, for God's sake, why not give to these your foreign subjects, what you have it in your power to bestow—a speedy and cheap administration of justice? This improvement in the Court of Appeal would create more business, indeed, but justice would no longer be taxed and delayed, and, in the cost and the delay, be denied. But if you would safely, and without working injustice, stop appeals from the colonies, carry your reforms thither also: I should say, for instance, that a reform of the judicatures of India would be matter most highly deserving the consideration of his Majesty's Government. I am at a loss to know, why there should be so rigorous an exclusion of jury trials from the native courts of India. I know, and every one must know, who has taken the trouble to inquire, that the natives are eminently capable of applying their minds to the evisceration of truth in judicial inquiries; that they possess

powers of discrimination, ready ingenuity, and sagacity in a very high degree; and that where they have been admitted so to exercise those powers, they have been found most useful and intelligent assistants in aiding the investigations of the judge. But I know, also, that your present mode of administering justice to these native subjects is such as I can hardly speak of without shame. Look at your local Judges—at their fitness for judicial functions. A young Writer goes out to India; he is appointed a Judge, and he repairs to his station, to make money, by distributing justice, if he can, but, at all events, to make money. In total ignorance of the manners, the customs, the prejudices, possibly of the language, of those upon whose affairs and conduct he is to sit in judgment, and by whose testimony he is to pursue his inquiries, and very possibly equally uninformed of the laws he is to administer—he must needs be wholly dependent upon his Pundit, for direction both as to matter of fact and matter of law, and, most probably, becomes a blind passive tool in the hands of a designing minister.

The House will not suppose that I mean to insinuate for a moment the possibility of suspicion as to the wilful misconduct of the Judge in this difficult position. I am very sure that the party who may happen to occupy that high office would rather cut off his right hand, if the alternative were offered him, than take the bribe of a paria to misdecide a cause that came before him. But I am by no means so secure of the Pundit upon whom the Judge must be necessarily dependent; and while he is both less trustworthy and wholly irresponsible, the purity of the responsible, but passive, instrument in his hands is a thing of perfect insignificance. The experiment of trial by jury, by which this serious evil may, in part, be remedied, has been already tried. The efforts made by a learned Judge of Ceylon, Sir Alexander Johnson, to introduce into that Colony the British system of justice, manfully supported by the Government at home, have been attended with signal success. I am acquainted with a particular case, indeed, the details of which are too long to lay before the House, but which showed the fitness of the natives to form part of a tribunal, notwithstanding the prevalence of strong prejudices in a particular instance among them, where the failure of the experiment might, therefore, have

been apprehended. A Brahmin was put on his trial for murder, and a great feeling excited against him, possibly against his caste. Twelve of the jury were led away by this feeling, and by the very strong case which a subtle conspiracy had contrived against the prisoner,—when a young Brahmin, the thirteenth juror, examined the evidence with a dexterity and judgment that excited the greatest admiration, and from his knowledge of the habits and manners of the witnesses, together with extraordinary natural sagacity, succeeded in exposing the plot and saving the innocent man. Other considerations there are, less immediately connected with the administration of justice, and which I might press upon the House, to evince the expediency of introducing our system of trial in the East. Nothing could be better calculated to conciliate the minds of the natives than allowing them to form part of the tribunals to which they are subject, and share in administering the laws under which they live. It would give them an understanding of the course of public justice, and of the law by which they are ruled; a fellow feeling with the government which executes it; and an interest in supporting the system in whose powers they participate. The effect of such a proceeding would be, that in India, as in Ceylon, in the event of a rebellion, the great mass of the people, instead of joining the revolters, would give all their support to the Government. This valuable, but not costly fruit of the wise policy pursued in that Island, has already been gathered. In 1816, the same people which, twelve years before, had risen against your dynasty, were found marshalled on your side, and helping you to crush rebellion. So will it be in the Peninsula, if you give your subjects a share in administering your laws, and an interest and a pride in supporting you. Should the day ever come when disaffection may appeal to seventy millions, against a few thousand strangers, who have planted themselves upon the ruins of their ancient dynasties, you will find how much safer it is to have won their hearts, and universally cemented their attachment by a common interest in your system, than to rely upon a hundred and fifty thousand Seapoy swords, of excellent temper, but in doubtful hands.

v. I now, Sir, come to the administration of law in the country, by Justices of Peace; and I approach this jurisdiction with

fear and trembling, when I reflect on what Mr. Windham was accustomed to say, that he dreaded to talk of the game laws in a House composed of sportsmen; and so, too, I dread to talk of the Quorum in an assembly of magistrates. Surrounded as I am both among my Honourable Friends, and among Members on the other side, by gentlemen in the commission, I own that this is a ground on which I have some reluctance to tread. But I have to deal with the principle only, not with the individuals: my reflections are general, not personal. Nevertheless, considering the changes which have been effected in modern times, I cannot help thinking it worth inquiry, whether some amendment might not be made in our Justice-of-peace system? The first doubt which strikes me is, if it be fit that they should be appointed as they are, merely by the Lords Lieutenant of counties, without the interference of the Crown's responsible ministers. It is true that the Lord Chancellor issues the commission, but it is the Lord Lieutenant who designates the persons to be comprehended in it. Such a thing is hardly ever known as any interference with respect to those individuals on the part of the Lord Chancellor. He looks to the Lord Lieutenant, or rather to the 'Custos Rotulorum,' which the Lord Lieutenant most frequently is (indeed everywhere but in counties Palatine,) for the names of proper persons. The Lord Lieutenant, therefore, as Custos Rotulorum, absolutely appoints all the justices of the peace in his county, at his sole will and pleasure. Now, I cannot understand what quality is peculiar to a Keeper of the Records, that fits him, above all other men, to say who shall be the judges of the district whose records he keeps. I think it would be about as convenient and natural to let the Master of the Rolls appoint the judges of the land, (indeed, more so, for he is a lawyer) or to give the appointment to the Keeper of the State Papers. The Custos Rotulorum may issue a new commission, too, and leave out names; I have known it done; but I have also known it prevented by the Great Seal; indeed, it was laid down as a rule by the late Lord Chancellor Eldon, from which no consideration, his Lordship was used to say, should induce him to depart, that however unfit a magistrate might be for his office, either from private misconduct or party feeling, he would never strike him

off the list, until he had been convicted of some offence by the verdict of a Court of Record. Upon this principle he always acted. No doubt his Lordship felt, that, as the Magistrates gave their services gratis, they ought to be protected; but still it is a rule which opens the door to very serious mischief and injustice; and I myself could, if necessary, quote cases in which it has been most unfortunately persevered in. On looking, however, at the description of persons who are put into the commission, I am not at all satisfied that the choice is made with competent discretion; and upon this part of the question I may as well declare at once, that I have very great doubts as to the expediency of making Clergymen magistrates. This is a course which, whenever it can be done conveniently, I should certainly be glad to see changed, unless in counties where there are very few resident lay proprietors. My opinion is, that a clerical magistrate, in uniting two very excellent and useful characters, pretty generally spoils both; that the combination produces what the alchemists call a *tertium quid*, with very little, indeed, of the good qualities of either ingredient, and no little of the bad ones of both, together with new evils superinduced by the commixture. There is the activity of the magistrate in an excessive degree—over-activity is a very high magisterial offence, in my view; yet most of the magistrates distinguished for over-activity are Clergymen: joined to this are found the local hatings and likings, and, generally, somewhat narrow-minded opinions and prejudices, which are apt to attach to the character of the resident parish priest, one of the most valuable and respectable if kept pure from political contamination. There are some Lords Lieutenant, I know, who make it a rule never to appoint a clergyman to the magistracy; and I entirely agree in the policy of that course, because the education and the habits of such gentlemen are seldom of a worldly description, and therefore by no means qualify them to discharge the duties of such an office; but, generally speaking, as the House must be aware, through the country the practice is far otherwise. Again, some Lords Lieutenant appoint men for their political opinions; some for activity as partisans in local contests; some are so far influenced as to keep out all who take a decided part against themselves in matters where all men should be free to act as their

opinions dictate; and in the exercise of this patronage no responsibility whatever substantially exists. Appointed, then, by irresponsible advisers, and irremoveable without a conviction, let us now see what is the authority of men so chosen and so secure.

In the first place, they have the privilege of granting or withholding Licenses. As we all know, it lies in the breast of two Justices of the Peace to give or to refuse this important privilege. It is in their absolute power to give a License to one of the most unfit persons possible; and it is in their power to refuse a License to one of the most fit persons possible. They may continue a license to some person who has had it but a twelvemonth, and who, during that twelvemonth, has made his house a nuisance to the whole neighbourhood; or they may take away a License from a house to which it has been attached for a century, and the enjoyment of which has not only been attended by no evil, but has been productive of great public benefit. And all this, be it observed, they do without even the shadow of control. There is no rule more certain than that a mandamus does not lie to compel Justices either to grant or withhold a License. I hardly ever remember moving for one; and I only once recollect a rule being granted—it was on the motion of my Honourable and Learned Friend, the Solicitor-General. But I know that great astonishment was expressed on the occasion; that every one asked what he could have stated to make the Court listen to the application; that all took for granted it would be discharged, as a matter of course; which it accordingly was, in less time than I have taken to relate the circumstance. What other control is there over the conduct of the Licensing Magistrate? I shall be told that he may be proceeded against, either by a Criminal Information, or by Impeachment. As to the latter, no man of common sense would dream of impeaching a Magistrate, any more than he would think now-a-days of impeaching a Minister. Then, as to proceeding by Criminal Information:—In the first place it is necessary, in order even to obtain the rule, to produce affidavits, that the Magistrate has been influenced by wilful and corrupt motives: not merely affidavits of belief in those who swear, but of facts proving him guilty of malversation in his office. Then, suppose, as not unfrequently happens, a rule ob-

tained on this ex parte statement; the Magistrate answers the charges on oath; he swears last, and may touch many points never anticipated by the other party, consequently not answered; and unless the alleged facts remain, upon the discussion, undeniable, and the guilt to be inferred from them seems as clear as the light of day, the rule is discharged with costs. The difficulty of proving corruption is rendered almost insuperable, because all the Magistrate has to do, in order to defend himself from the consequences of granting or withholding a license, is adopt the short course of saying nothing at the time—of kee ing his own council—of abstaining from any statement of l reasons. Let him only give no reason for his conduct, and power on earth can touch him. He may grant a license to common brothel, or he may refuse a license to one of the mos respectable inns on the North road; let him withhold his rea sons, and his conduct remains unquestionable; although th real motive by which he is actuated may be, that he is in th habit of using the one house, and that the landlord of the other will not suffer him to use it in the same way. Unless you can show that he has himself stated his motives, or th at there are circumstances so strong against him as amou nt to conviction, you are prevented from even instituting a inquiry on the subject. Thus absolute is the authority c the Magistrate with regard to licensing. With the permissio of the House, in order to illustrate the abuse of this extensi power, I will read a letter which I received some time ago the subject of the licensing system, from one of the mo worthy and learned individuals in this country—a man o large fortune, and of most pure and estimable character, whc long acted as a magistrate in one of the neighbouring counties

[Mr. B. here read a letter, in which the tendency of Justice is stated to favour particular houses, and not take away thei licenses, though guilty of the grossest irregularities, on the pretence, become a maxim with many of them, that "the house being brick and mortar cannot offend," whereas a haunt of bad company being established, it becomes the Magistrate's duty to break it up. It was also shown how the power of licensing placed millions of property at the disposal of the Justices, a license easily adding 500*l.* to the value of a lease, and often much more, and the number of victuallers exceeding

40,000. It further showed the partiality of the Bench towards brewers and their houses, especially in Middlesex and the home counties.]

I have received a variety of other information upon this subject, all leading to the same result. That which I have described, the leaning of justices towards brewers, whom, in licensing, they favour, as brother Magistrates, although the latter are not allowed by law to preside at a Brewster Sessions, is, perhaps, the most crying evil connected with the system; but who does not know, (I am sure I do, in more parts of the kingdom than one or two,) that licenses are granted, and refused, from election motives? When, some time ago, I brought the Beer Bill into this House, I had, of course, an extensive correspondence on the subject; and I was assured by many highly respectable persons, that the evil of this system is by no means confined to the neighbourhood of London, of which they gave me numerous instances.

Nor is the licensing power of the Magistracy that in which alone great abuses exist. They prevail wheresoever their authority is exercised; in the commitments for offences against the Game Laws; in dealing with petty offences against property; in taking cognizance of little assaults, especially on officers; in summary convictions for non-payment of tithes, and a number of other matters affecting the liberties and property of the subject; and, yet, for their conduct in all of these matters they are not amenable to any superior power, provided, as I have said before, they only keep their own council, and abstain from stating the reasons by which they have been actuated, should their motives be evil. There is not a worse constituted tribunal on the face of the earth, not even that of the Turkish Cadi, than that at which summary convictions on the Game Laws constantly take place; I mean a bench or a brace of sporting justices. I am far from saying that, on such subjects, they are actuated by corrupt motives; but they are undoubtedly instigated by their abhorrence of that *caput lupinum*, that *hostis humani generis*, as an Honourable Friend of mine once called him in his place, that *feræ naturæ*—a poacher. From their decisions on those points, where their passions are the most likely to mislead them, no appeal in reality lies to a more calm and unprejudiced tribunal; for, unless they set out any matter illegal on the face of the convic-

tion, you remove the record in vain. Equally supreme are they in cases where, sitting in a body at Quarter Sessions, they decide upon the most important rights of liberty and property. Let it be remembered that they can sentence to almost unlimited imprisonment, to whipping, to fine, nay, to transportation for seven and fourteen years. I have shuddered to see the way in which these extensive powers are sometimes exercised by a jurisdiction not responsible for its acts. It is said, that the Magistracy ought not to be responsible, because it is not paid; but we ought not to forget, that as gold itself may be bought too dear, so may economy; money may be saved at too high a price. Mark the difference of responsibility between the Quarter Sessions and one of the superior Courts of the kingdom. In the King's Bench, the name of the Judge who pronounces the judgment is known, and the venerable magistrate stands before the country in his own proper person, always placed at the bar of public opinion. Here it is Lord Tenterden —it is Mr. Justice Bailey, by their names: in the other case, it is merely the Quarter Sessions, which, as Swift says, is nobody's name. The individual Magistrates composing it are not thought of; their names are not even published. It is a fluctuating body. If the same individuals always sat in the Court, there might be some approach to responsibility. At present there is none; and where there is no responsibility, injustice will occasionally be committed, as long as men are men. It would be some correction of the evil, if the number of Magistrates was fixed; if their names were always known in connection with their acts; and if they were more easily removeable on proof of their misconduct. Then comes the question—Is it, after all, gratuitous service? We are told that we cannot visit the Magistrates severely, or even watch them very strictly, because they volunteer their duty, and receive no remuneration for their trouble. But although they have no money for it, they may have money's worth. Cheap justice, Sir, is a very good thing; but costly justice is much better than cheap injustice. If I saw clearly the means by which the Magistrates could be paid, and by which, therefore, a more correct discharge of the magisterial duties might be insured, I would certainly prefer paying them in money to allowing them to receive money's worth by jobs, and other violations of their duty. Not only may the Magistrate himself receive compensation in money's worth; he may

receive it in hard money by his servants. The fees of a Justice's clerk amount to a little income, often to many times a man's wages. I have heard of a reverend Justice in the country, having a clerk whose emoluments he wished to increase, and therefore he had him appointed Surveyor of weights and measures, with a salary of a guinea and a half a week. This person appointed a deputy, to whom he gave five shillings and sixpence, and who did all the duty. These circumstances came under the consideration of his brother Justices; when, after a strenuous opposition, and among others, on the part of the gentleman who communicates the occurrence in a letter now lying before me, it was decided, not only not to remove the first appointed person, who it was proved was doing nothing, but to swear in the other as his assistant! My friend is not entirely without suspicion that this functionary, having so small a remuneration as five shillings and sixpence a week, can only have undertaken the duty with a view of increasing it by some understanding with the people whose weights and measures it is his duty to superintend.

The operation of pecuniary motives in matters connected with the magistracy is more extensive than may at first sight appear. There was a Bill introduced by the Right Honourable Gentleman opposite, for extending the payment of expenses of witnesses and prosecutors out of the county rates. It is not to be doubted that it has greatly increased the number of commitments, and has been the cause of many persons being brought to trial who ought to have been discharged by the Magistrates. The habit of committing, from this and other causes, has grievously increased every where of late, and especially of boys. Eighteen hundred and odd, many of them mere children, have been committed in the Warwick district, during the last seven years. Nor is this a trifling evil. People do not come out of gaol as they went in. A boy may enter the prison gate merely as a robber of an orchard; he may come out of it "fit for"—I will not say "treasons"—but certainly "stratagems and spoils." Many are the inducements, independent of any legislative encouragement, to these commitments. The Justice thinks he gains credit by them. He has the glory of being commemorated at the assizes before the Lord Judge, and the Sheriff, and the Grand

Jury, and all who read the Crown Calendar. On that solemn occasion he has the gratification of hearing it fly from mouth to mouth—"He is a monstrous good magistrate; no man commits so many persons." Then there is the lesser glory acquired among neighbours; into whose pockets they are the means of putting money, by making them prosecutors and witnesses in petty criminal cases; and thus converting (as Sir Eardley Wilmot says) their journey of duty into a jaunt of pleasure to the Assizes. The reputation of activity is very seducing to a Magistrate; but I have known it curiously combined with things more solid than empty praise.—In a certain town, which I am well acquainted with, one suburb was peopled by Irishmen and Scots, who were wont to fight on every market day a good deal, at fair tides a good deal more, but without any serious affray taking place. Beside these two classes of the King's subjects, there also dwelt in those parts two Justices of the King, assigned to keep the peace; for the better conserving of which, they repaired at the hour of fight to an alehouse, conveniently situated hard by the scene of action, and there took their seat with a punch-bowl full of warrants, ready to fill up. If the Irish happened to be victorious, the Scots came one after another, and applied for commitments, against those who had assaulted them. The dispatch with which warrants, at least, if not justice, were administered, was notable. Then came the other party, and swore to as many assaults upon them; and, justice being evenhanded, they, too, had their desire gratified; until the bowl was, by degrees, emptied of its paper investment, and a metallic currency, by like degrees, took its place.

Some of these details may be ludicrous; but the general subject is a most serious and a most important one, because these facts show the manner in which justice is administered to the people out of sight of the public, and out of reach of the higher Courts of Law. It is through the Magistracy, more than through any other agency—except, indeed, that of the tax-gatherer—that the people are brought directly into contact with the Government of the country; and this is the measure of justice with which, when they approach it, they are treated by functionaries irresponsible for their proceedings. A Justice of the peace, whether in his own parlour or on the

bench—whether employed in summary convictions, or in enforcing what is called, after a very worthy friend of mine, Mr. Nicholson Calvert's Act (one of the worst in the statute-book, which I hope to see repealed, and which I trust its excellent author will very long survive,)—is never an ostensible individual, responsible in his own proper person to public opinion; hardly ever, unless he chooses by some indiscretion to make himself so, amenable to a higher and purer judicature. The Judges of the land, chosen from the professors of the law, after the labours of a life previously devoted to the acquirement of knowledge calculated to fit them for their office, and clothed with attributes of supreme power over petty magistrates, are responsible for every word and act, and are subject to every species of revision and controul. They were selected with the most anxious caution for every qualification of high character and of profound knowledge; and yet they are incapable of pronouncing a single decision, from which an appeal will not lie to some other tribunal immediately above them: while, from the decision of the country justices—taken from the community at hazard, or recommended by the habits least calculated to make them just—subject to no personal responsibility, because beyond or below the superintendence of public opinion—and irremovable, unless by a verdict for some indictable offence—from their decision there is no appeal; from their decision, although they have to deal with some of the most important interests in the country, there is no appeal, unless their misdeeds shall have been set forth in a case, submitted by their own free will, with their express permission, to the Court of King's Bench.

These are the principal points to which, in the first division of my subject, I desire to call the attention of the House, as deserving your deliberate consideration, and as the materials of solemn inquiry. I could have wished to accomplish my object more briefly, but I found it impossible consistently with distinctness. I am not aware that I have made an unnecessary comment; and I must trust to the candour of honourable Members, in weighing the importance of these statements, to pardon the apparent prolixity unavoidably incident to the handling of a very extensive and varied argument.

II. I wish I could give the House any promise that my

speech was approaching its termination; but that hope can hardly be entertained, when I state, that I am now about to enter on the still more vast and momentous consideration of the Law as Administered in those tribunals, whose construction we have been surveying—the Distribution of Justice in those Courts in which it has been my fortune to practise during a pretty long professional life.

There is a consideration of a general nature, to which I would first of all advert; I mean, the inconvenient differences in the Tenures by which property is held, and the rules by which it is Conveyed and Transmitted, in various districts of the country. Is it fitting or consistent with reason, or, indeed, with justice, that merely crossing the River, or travelling a distance of some miles in this neighbourhood, should make so great an alteration in the law of real property, as that, to the eastward of us, all the sons inherit equally; to the westward the youngest alone; and here the eldest? But these rules of the Common Law, of Gavelkind, and of Borough English are better known, and operate within more defined limits. What shall be said of the Customary Tenures, in a thousand manors, all different from the Common Law that regulates freehold estates, most of them differing from each other? Is it, I ask, fit, that this multitude of Laws, this variety of Codes, the relics of a barbarous age, should be allowed to exist in a country subject to the same general bonds of government? I should trespass at greater length than I am willing to do, were I to detail the various customs which exist in the manors of this country; but to give the House an idea of their diversity, I must mention a few. In one manor, the Copyhold property is not allowed to pass by will; in another, it may be so conveyed. I admit that a great improvement has been made in this respect, by the act of an Honourable Friend of mine (Mr. M. A. Taylor), to whom we owe several other important legislative measures, allowing it to be devised by will without surrender. This is the only material improvement which has been made, with respect to such property, within the last hundred years; but it only operates in facilitating the transmission, according to the custom of the manor of passing the copyhold by will. In one manor, a devise is not valid, if made longer than two years before the testator's de-

cease; so that it is necessary for wills to be renewed every two years; in another one year, in a third three years are the period; while in many there are no such restrictions. In some manors the eldest daughter succeeds to the exclusion of her sisters, as the eldest daughter (in default of male heirs) succeeds to the crown of England; in other manors all the daughters succeed jointly, as co-parceners, after the manner of the Common Law. In some manors a wife has her dower, one-third of the tenement, as in case of freehold. In others, she has, for her "*free bench*," one half; and again, in some, she takes the whole for life to the exclusion of the heir. The fines on death or alienation vary; the power and manner of entailing or cutting off entails vary; the taking of heriots and lords' services varies. There are as many or more of these local laws than in France, in the *Pays de Coutûme*, of which I have seen four hundred enumerated, so as to make it the chief opprobrium of the old French law, that it differed in every village. Is it right that such varieties of custom should be allowed to have force in particular districts, contrary to the general law of the land? Is it right, I may also ask, that in London, Bristol, and some other places, the debts due to a man should be subject to execution for what he owes himself, while in all the rest of England there is no such recourse; although in Scotland, as in France, this most rational and equitable law is universal?

All these local peculiarities augment the obstacles, both to the conveyance and to the improvement of landed estates. They prevent the circulation of property in a great degree; and they lessen the chance that an owner of such tenements would otherwise have of raising money, on their security, adequate to their value. The greater facility of conveyance is nothing set against the ignorance of local custom; and then copyhold property is not liable even for specialty debts, nor can it be extended by elegit; and thus, absurd and unjust as is the law which prevents freehold property from being charged with simple contract debts, it goes further in this instance, and exempts the copyhold from liability, even to those of the highest nature, a judgment itself not giving the creditor any right of execution against it. The obvious remedy to be adopted in this case is, to give all parts of the country the same rules touching property; and, therefore, I would

propose an assimilation of the laws affecting real estates, all over England, to take place at a given period, say twenty or thirty years hence, so as to prevent interference with vested interests.

Having now, Sir, pointed out some of the varieties of our law in certain districts,—its inequalities in respect of place,—let us proceed to examine whether it is more uniform and more equal in respect of persons? And here we are met, at the very outset, with a most fearful exception to the maxim, which describes the law as no respecter of persons. It is commonly said that the Crown and the subject come into court on equal terms. Lawyers of the present day do not, I am aware, profess this; but that eminent dealer in panegyric, Mr. Justice Blackstone, has spoken as if the King had no greater advantage in litigation than any of his people. It would have been well if he had stated that this was only a fiction; though he must have been puzzled to prove it, like other fictions, invented for the furtherance of justice. It is true that the law itself makes no such pretensions to impartiality; for of the two classes of manifest inequality which I am about to mention, one is avowedly such, by reason, as it is said, of the prerogative; although the other, just as substantial in reality, is not avowed to be so. I begin with the latter. It is said, that the Crown can no more take my estate than I can another man's; for if I have a claim against the Crown, I am told that I have a remedy, by the decent and respectful mode, as they term it, of a *petition de droit*, or, in case of a title by matter of record, a *monstrans de droit*. The same eloquent panegyrist, whom I have mentioned, describing the very name of the process to have arisen from the presumption of the law, that the King can do no wrong, adds, that, from the great excellence ascribed to the Crown, "to know of an injury and to redress it, are one and the same thing; therefore the subject has only to make his grievance known by his petition." From this is drawn the conclusion, that when a subject has a right, he can have the means of defending it with equal facility against the Crown as against any other party. Now, let us see how far this consequence is, in point of fact, realized. The Crown never moves by itself, but through the medium of the King's Attorney-general. No proceeding can be taken against the Crown without the *fiat* of

the Attorney-general; and unless a party obtains that, all his trouble and expense in going to Whitehall, and asking the permission of the Secretary of State, is lost, because all such affairs are referred to the Crown lawyer; and if he should refuse leave, the only remedy left to the subject is the very convenient and practical one of impeaching that officer. It may be said that the Attorney-general would not refuse his *fiat*, because it is a mere proceeding in the first instance, like suing out an original writ, or a *latitat*, to bring a cause into the King's Bench; and the Attorney-general here is like the Chancellor or the sealers of the writs elsewhere, who issue writs to any suitor as a matter of course. But I make answer that, although it ought to be so, it is not so. It is in the discretion of the Attorney-general, that is, of your adversary's council, to let you bring your action or not as he pleases. Why, I demand, should it be left in the breast of any man to refuse that which another may claim as a right, and as the lowest of all rights, to have his right inquired into by law? To show you how this discretionary power is used, I might say abused, I will mention a case; and, following the rule I prescribed to myself at setting out, it shall be one that has come within my own knowledge professionally. A considerable estate had, on a supposed default of heirs, been granted to a gentleman of great respectability, a friend of mine. After some time another individual set up a claim to it, on the ground of being the heir of the body of the original grantee, the first gift having been in tail male. The case was submitted to me, and to a learned friend of mine at the Chancery bar; and we advised that the party should proceed by Petition of Right. We examined all the cases upon the subject, and deeming this the only mode, we applied to the Attorney-general; and he refused his *fiat*, giving no better reason than that we ought to have proceeded by ejectment against the tenant in possession. We preferred our Writ of Right against the Crown, as all lawyers term the *petition de droit*. Had the question been with a subject, we might either have proceeded by ejectment to recover possession, or by writ to try the mere right as the higher remedy; and no officer could have shut us out at either door by which we chose to enter the court. Now, I can state conscientiously my opinion, that the case of the indivi-

dual alluded to was a strong one in statement. It was one of pedigree, and certainly one of the clearest I had seen on paper. I do not mean to assert,—for I had no means of ascertaining it,—that it was unanswerable. There may have been some gap in the chain, some marriage or some birth not proved, or some other flaw in the claimant's title; but of that I can form no judgment, because that I was not allowed to try; and this is the hardship of the case,—the matter of which, I hold, my client had just reason to complain—he was not allowed to bring forward his proofs. Then, I ask, is it not a mere mockery in those panegyrists of things as they are, to say that the Crown and the subject stand on equal footing?

But the cases in which the same disparity prevails between their rights, avowedly and by the declared sanction of the law, are much more numerous; they are of constant occurrence, too, in practice; and I will, therefore, mention them for the information of those who are not lawyers, and, I believe I may say, of some who are. In the first place, it is the general principle that a Demurrer is an admission of the facts in dispute; but this, it is said, does not extend to the Crown, and that, if defeated in this way, it can begin again, and is not concluded. Secondly, it has been decided lately in the Exchequer—I was not in the case, but so I have heard, from those who attend that Court,—that no such thing is allowed as an Exception for insufficiency to an answer filed by the Attorney-general on behalf of the Crown. But the subject notoriously enjoys no such privilege; his answer is open to all exceptions; were it not, you must, in suing him, take for an answer just what he chooses to tell you, and he escapes the equitable jurisdiction entirely. Next, (and an instance occurred lately, which I argued in the Court of King's Bench, and which was decided against me, without hearing the other side,) wherever a suit is commenced, whether it be in Cumberland, Middlesex, or Cornwall, (and in Cornwall was the case I allude to,) if the Crown has any title which may, however indirectly, come in question, although no party, the proceedings can at once be removed by a mere suggestion, not of record, but on the part of the Attorney-general, stating it from his place in court, and a Trial must then be had at Bar before the four Judges. In this way all the preparations made by the par-

ties are put an end to, and witnesses must be brought to town at an inordinate expense, and under every disadvantage. There is no doubt that an allowance would, in such cases, be made by the Crown to compensate for this additional cost; but still the party has to pay in the first instance, together with being taken away, as well as his witnesses, from that part of the country in which he and they are known, to the County of Middlesex, where the power of the Crown is more accurately known than the character of the other suitor. When this point was argued, the Court held the prerogative too clear to be discussed. There is a fourth advantage which the Crown possesses over any other party. No person can, after the jury is sworn, withdraw a record, but must be non-suited, to avoid a verdict. The Crown has, to my knowledge, withdrawn it, after council had been heard, and witnesses examined, and the jury been charged by the judge; I have known the record withdrawn while they were deliberating, and because they were deliberating, which indicated hesitation; and this late retreat is made without the penalty to which any other party would be liable, who had fled before the cause was called on, namely, the costs of the day: for there is another unfairness to justify this course; that as the Crown is supposed above receiving costs, so it is to be exempt also from paying them. But the reason of this I cannot possibly see. I cannot grant that the dignity of the Crown places it above taking costs, when I reflect that by the Crown is here meant the revenue raised from the people for the public service, and that, consequently, the non-payment of costs to the Crown is an increase of the people's burthens. But, even if I could admit the propriety of the Crown's receiving none, it would by no means follow that it should pay none to the subject, who is in a widely different predicament. All this, however, arises out of notions derived from the feudal times, when the Crown was in a situation the very reverse of that in which it stands at present, its income then arising almost entirely from a land revenue. There is now no reason why it should be exempt from paying, or disabled from receiving, in all cases where costs would be due between common persons. Indeed, there has been of late years an exception made in the crown law on this head, but so as to augment the inequality I complain of.

In all Stamp prosecutions, the costs of the Crown are paid by the unsuccessful defendant; so far does it stoop from its former dignity; but not so low as to pay the defendant a farthing of his costs should he be acquitted.

The last and the worst part of the history remains; whenever a Special Jury is summoned in a Crown case, and that all the twelve jurors do not attend, a Tales cannot be prayed to let the cause proceed, without a warrant from the Attorney-general: so that it is in the power of your adversary to refuse this at the time it may be most for his advantage so to do; while you have no option whatever in case it should be for his interest to proceed, and for your's to delay. I pray the House will mark attentively what I am now about to relate, although, indeed, I should apologise for thus appealing to them, after the singular patience with which I have been heard throughout, for the great length of time I have already occupied. There was a case in the Court of Exchequer, in which I acted as council for the defendant, and had to subject a Crown witness to a severe cross-examination; he exhibited strong indications of perjury, but the verdict went against me notwithstanding. My Learned Friend, Mr. Serjeant Jones, (whose talent and professional skill entitle him to higher praise than any in my power to bestow,) whether he profited by my experience, or was more dexterous in dealing with the case, did honour to himself by succeeding in the next trial, when the same witness was examined; for the suspicion of perjury entertained before was now turned into certainty, and the party acquitted. A prosecution for perjury was instituted against that man and others connected with him; eighteen indictments were found at the Sessions, and the Crown at once removed the whole by *certiorari* into the Court of King's Bench. There they were all to be tried, and a former Attorney-general conducted the prosecution. On the first, Meade, the witness I have mentioned, was clearly convicted. The other seventeen were then to have been tried, and Mr. Serjeant Jones called them on, but the Crown had made the whole eighteen Special Jury causes: a sufficient number of jurymen did not attend; my Learned Friend wanted to pray a tales, and the Crown refused a warrant. Thus an expense of ten thousand pounds was incurred, and a hundred witnesses from Yorkshire were brought to Lon-

don, all for nothing, except, after the vexation, trouble and delay he had endured, to work the ruin of the prosecutor, who had been first harassed upon the testimony of the perjured witnesses. These poor Yorkshire farmers, whom the villain had so vexed, had no more money to spend in law; all the other prosecutions dropped; Meade obtained a rule for a new trial, but funds were wanting to meet him again, and he escaped. So that public justice was utterly frustrated, as well as the most grievous wrong inflicted upon individuals. Nor did it end here; the poor farmer was fated to lose his life by the transaction. Meade, the false witness, and Law, the farmer whom he had informed against, and who was become the witness against him upon the approaching trial, lived in the same village; and one evening, in consequence, as was alleged, of some song or madrigal sung by him in the street, this man Meade seized a gun, and shot Law from his house dead upon the spot. He was acquitted of the murder, on the ground of something like provocation, but he was found guilty of manslaughter, and such was the impression of his guilt upon the mind of the Court, that he was sentenced to two years' imprisonment. A case of more complicated injustice—one fraught with more cruel injustice to the parties, I never knew in this country, nor do I conceive that worse can be found in any other. We may talk of our excellent institutions, and excellent they certainly are, though I could wish we were not given to so much Pharisaical praising of them; but if, while others, who do more and talk less, go on improving their laws, we stand still, and suffer all our worst abuses to continue, we shall soon cease to be respected by our neighbours, or to receive any praises save those we are so ready to lavish upon ourselves.

i. And now, having thus far cleared the way for examining the proceedings in our Courts of Justice, the first inquiry that meets us is, by what means Unnecessary Litigation may be Prevented; in other words, suits unjustly and frivolously brought, and wrongfully defended, by oppressive or intemperate parties. I shall here, as under almost all the other heads of the subject, begin by laying down what I take to be the sound principles of legislation applicable to the point, and then comparing with these the provisions actually adopted by our jurisprudence. The first and most obvious step is, to remove

the encouragement given to rich and litigious suitors, by lessening the expense of all legal proceedings; and I would put an end to all harassing and unjust defences, by encouraging expedition. Next, I would not allow of any action or proceeding which only profits the court and the practitioners, and the object of which is always granted as a mere matter of course; all things should be considered as done at once and for nothing, which may now be done on a simple application to the Court with some delay and expense. Thirdly, no party should be sent to two courts where one is able to afford him his whole remedy; nor to a dear and bad Court, when he can elsewhere have a cheaper and a better remedy; nor should any one be obliged to come twice over to the same Court for different portions of his remedy, which he might have all in one proceeding. Fourthly, whenever a strong presumption of right appears on the part of a plaintiff, the burthen of disputing his claim should be thrown on the defendant. This I would extend to such cases as bills of exchange, bonds, mortgages, and other such securities. In those cases I think the plaintiff should be allowed to have his judgment, upon due notice given, unless good cause be, in the first instance, shown to the contrary, and security given to prosecute a suit for setting the instrument aside. This is a mode well known in the law of Scotland, and would put an end to all those undefended causes, which are now attended with such great and useless expense, as well as injurious delay to the parties and the public. Fifthly, I would suggest, that in all cases where future suits are to be apprehended, proceedings might be adopted immediately to raise the question, and quiet the title. The law on this head also is very different in the two parts of the island. In England, it is not possible to have the opinion of any court, until the parties are actually engaged in a lawsuit, opportunities for which may very frequently not occur, until the witnesses to prove a case may be dead, or an infant, or a person living abroad and incapable of well defending his right, has come into possession. But the Scotch law furnishes a kind of action, the adoption of which may be productive of the greatest benefit, as I have once and again heard Lord Eldon hint in the House of Lords. I know very well that here we may file a Bill for perpetuating testimony, but there

must be an actual vested right in the party instituting the suit: and the proceeding is, besides, so cumbrous, as rarely to be used. The Scotch law, on the contrary, permits a Declaratory Action to be instituted by the party in possession or expectancy, *quia timet*, and enables him to make all whose claims he dreads parties, so as to obtain a decision of the question immediately. This is, of course, and very properly, at the expense of him who brings forward the suit for his own interest, unless where a very obvious benefit arises to the other party; for in Scotland they have nothing like our statute of Gloucester, and costs are always in the discretion of the court, as with us in equity. Sixthly, I would abolish all obsolete proceedings, which serve only as a trap to the unwary, or tools in the hands of litigious and dishonest parties, and lie hid or unheeded until, unexpectedly, they are brought forth to work injustice. For an instance, I will name Wager of Law, a defence which may be set up in answer to an action of *detinue*, or of debt on simple contract. This is another of the remains of the old system. The defendant has only to swear that he does not owe the sum of money claimed by the plaintiff, and bring eleven others to swear that they believe him; and a defendant would certainly be badly off if he could not find out so many persons to do this kind office for him, as he needs only bring those who know him, but know nothing at all of the circumstances, for the less they know, the more ready will they be to swear they believe their friend. He has only to place them on opposite sides, at the end of the table, (for the wisdom of past ages hath carefully fixed the stations which the parties are to occupy pending this 'solempnity,') get them to swear, and there is an end at once of the action. It is true that pleas of this kind are seldom pleaded, though it was done some time ago in the Common Pleas; and the oldest practitioners there, not being acquainted with the plea, were about demurring to it, when it was discovered to be a law wager well pleaded, and a complete good defence in law, though the practice was obsolete.

Now, these being the fundamental Principles that should guide us on this head, nothing can depart more widely from them than our Practice, and nothing can be more easy than making it conform to them. In the first place, without throwing away a thought upon the pain which I should necessarily

inflict upon some of my learned friends, much wedded to such lore—without caring a rush for the quantity of curious learning which would thus be thrown to waste—or dropping a tear over the musty records which must be swept away—I would abolish at once the whole doctrine and procedure of Fines and Recoveries. I hope I may not offend the ears of my respected brethren the conveyancers; but I must say, that if ever there was an absurdity not to be tolerated, it is those fictitious suits, at any time, but, above all, in the present state of society.

I wish to make myself understood, for I see by the countenances of some gentlemen, that they do not quite comprehend the whole absurdity of the law respecting Fines and Recoveries. I do not by any means wish to interfere with the power of making, or of barring entails: I consider the English law as hitting very happily the just medium between too great strictness and too great latitude, in the disposition of landed property; sufficient restraints upon perpetuities, upon endless settlements, are provided, to allow a free commerce in land, as far as that is consistent with the interests of agriculture, and the exigencies of our mixed constitution; while as much power is given of annexing estates to families, as may prevent a minute division of property, and preserve the aristocratic branch of the government. With the substance of our law of entail, then, I have no wish to meddle; all I desire is, to abolish the ridiculous machinery by which fines are levied and recoveries suffered. Every gentleman knows, that if he has an estate in fee he can sell it, or bestow it in any way he may please; but if he has an estate tail, to which he succeeds in the long vacation, he can go, on the first day of Michaelmas Term, and levy a fine, which destroys the expectant rights of the issue in tail; or he may, by means of a recovery, get rid of those rights and of all remainders over. He can thus, by going through certain mere forms, make himself absolute master of his estate, and do with it as he pleases. But this must be done through the Court of Common Pleas, at certain seasons of the year; and why should there exist a necessity for going there? Why not, if it be necessary, pay the fines which are due, without going there at all? I, the other day, asked this question of some learned friends,—Why force tenants in tail into court, for mere form sake? They laughed at my simplicity, and said, "All

this was asked a hundred years ago; there is no necessity for the proceeding, only to keep up the payment of the King's silver, alienation fines, and other duties." In case of bankruptcy, the necessity for those forms is not felt. A trader who is tenant in tail commits an act of bankruptcy, and by the assignment under the commission not only the interest vested in him is conveyed, but all remainders expectant upon it are destroyed, for the benefit of his creditors, and the estate passes to his assignees free from all restriction. The courts have held the conveyance in bankruptcy to be a statutory barring of the entail—an enlarger of the estate tail to a fee, as indeed the Bankrupt Laws evidently intended*. Now, I would do that for honest landowners which the law at present permits to be done for insolvent tradesmen and their creditors. So, too, a man and his wife cannot convey an estate of the wife without a fine or a recovery, neither can the wife be barred of her dower without a similar proceeding. The reason is, the influence her husband may possess over her mind; and, consequently, a judge takes the woman, in these cases, into a private room, to examine her, first, as to whether she acts from fear, and then, when that is out of the case, whether she is influenced by favour and affection: and he also examines her, as to any temporary increase of affection from any passing cause; and then, when she has purged herself of all temporary increase of affection, of all fear, and all love, she is allowed to give her consent. I would propose, in place of all this inquiry, not always very delicate, nor ever very satisfactory, to let husband and wife join in a common conveyance, with the consent of a guardian to be appointed, or of the next male relative of the wife, who is not related to the husband, and not interested in either the succession or the conveyance.

Now there is certainly nothing very real in a Fine; but as to Recoveries, I ask, do those persons who seem to hold by them, know at all what they avowedly proceed upon? They go upon the ground of compensation in value being made to the

* Of the bar to the issue in tail there can be no doubt; but there are decisions which lean against the operation of the Bankruptcy, to bar the remainders over, contrary to Blackstone's decided opinion, (2 Com. 286. 361.) and it should seem to the plain intent of the Legislature. See Doe *v.* Clarke, 5 B. A. 458, and Jennings *v.* Tayleure, 3 B. A. 557, where it is considered that a base fee only passes in the remainder.

remainder man, whose right they cut off, and who, but for this fictitious suit, would have a title to take the estate after the tenant-in-tail's decease. He is said to recover a compensation in value; and from whom does he get it? Why, the common vouchee, who is the Cryer of the Court of Common Pleas, and who, like the man at the Custom House obliged to take all the oaths other people do not like, lies groaning under the weight of all the liabilities he has incurred to every remainder man, since he became cryer, and answerable for the millions of property, the rights to which, in remainder, have been barred, he not being worth a shilling. Locke says, that a madman is one who reasons rightly from wrong premises; so it is with the lawyers on recoveries, who argue very ingeniously, and even soundly and consistently, on the principle of the compensation, and whose conclusions could in no wise be impeached, if you once allowed the fact, that those in the remainder are compensated by the proceedings. Indeed, it happened to myself, not long ago, in a case where a very large estate was in question, to argue, and to prevail, respecting the effect of a recovery, on this very ground of compensation in value. I there had to contend, that the claimant was barred by the recovery, in consequence of the compensation received from the vouchee, though it was quite certain that, from the vouchee, there never was, nor ever could be, received a single shilling. My argument, on that occasion, did not excite a smile in the Court, because the principles of the law were known to be thus established, and the consequences were of serious import, be the premises ever so ludicrous. But, were I to use the same argument elsewhere, it would, if understood, be received with much less gravity. Put an end, then, to all such ridiculous forms, which have no earthly use but to raise a little money by way of fees; and which, beside creating expense and delay, and oftentimes preventing tenants in tail from passing their property by will, which they cannot if they die before suffering the recovery, give rise to a number of questions in law, often very puzzling, always dilatory and costly—not rarely to mistakes in fact; as where I knew an estate go to the tenant in tail in remainder, instead of the recoveree's heir-at-law or devisee, which he fully intended it should, merely because in suffering the recovery an omission was made of one parcel.

Sir, I also would put an end to those imaginary Trusts in settlements for the purpose of preserving Contingent Remainders. It has been said, that some Members of this House, who, during the Commonwealth, retired to the country and employed themselves in conveyancing, invented those refinements which characterize what are called Strict Settlements. I repeat, that my object is not to touch the principle of the law of entails, as it now exists in this country; believing that owners of estates should not be laid under greater restrictions than they now are in disposing of them by will after their death, or by settlement upon marriages in their families. But let the purpose of the owner be accomplished more simply and more easily than can now be done. I would allow every man to settle or to devise his property to A. during his life, and after him to B. and C. in succession, making by plain words so many life estates, and giving a fee to the person who, by our present law, takes the first estate tail, not allowing the latter to have any power over the property until it became vested in possession, but requiring that, in order to affect it while in expectancy, he and the tenant for life should join in some simple conveyance, as a feoffment, whereby the settlement might, if the parties chose, be carried on. The property then would not be alienable an hour sooner than it now is, and it would be alienable without fine or recovery; and I would make the act, which the law now deems a discontinuance, as a feoffment in fee by tenant for life, absolutely void to all purposes, instead of making it a forfeiture of the particular estate of the feoffor though void as a conveyance; so that I would get rid of the necessity of trustees being interposed to save the contingent uses from destruction.

Again, I would restore the Statute of Uses to what it was clearly intended to be. Our ancestors made that law, by which if land were given to A. for the use of B., the latter was deemed the legal owner, the use being executed in him, just as if A. did not exist. It was justly observed by Lord Hardwicke, that all the pains taken by this famous law, ended in the adding of three words to a conveyance. This has been said by conveyancers to be a severe remark*, but it is perfectly correct; for the

* Some have questioned its authenticity, as not to be found in a MS. note of Hopkins *v.* Hopkins—but the words are far too remarkable to

Courts of Equity invented Second Uses or Trusts, by holding with the Courts of Law that the statute did not apply to land given to A. to the use of B., in trust for C.; that it executed the use only in B., but not in C.; therefore, the whole provision is evaded, by making the gift "To *the use of* B. in trust for C.;" and these three words send the whole matter into Chancery, contrary to the plain intent of the statute. It was also held that copyhold estates are not within the statute in any way; and there are other nice exceptions, but not much better grounded. Can there be any reason whatever for not making all such estates legal at once, and restoring them to the jurisdiction of the common law, by recognising, as the owner, the person to whom in reality the estate is given, and passing over him who is a mere nominal party?

Another deviation from the principles I have laid down, and a great source of multiplicity of suits, is the law with respect to Agreements for sales, leases, and other conveyances. Thus, if I agree with a person to give him a lease, though he, under the agreement, becomes my tenant, he is my equitable tenant only, but not my legal tenant. He may be possessed of a written agreement, signed and sealed, for a lease of ten years, and may occupy under it, but he has no lease which a court of law can take notice of; and if an ejectment is brought, he must go out. He may go into a Court of Equity on his agreement, if that is any comfort to him; he may apply for a decree against me to perform my agreement; but till then his claims are not recognised in a Court of Common Law. If an injunction be brought, the expenses are further multiplied. Why, I ask, should not the agreement, such as I have described, be as good as a lease; when, in substance, it is the very same thing, and only wants a word added or left out to make it the same in legal effect too? A case illustrative of this subject happened to come within my own observation. I was council in a case, at York, where an agreement had been entered into and possession given; but because it did not contain words of present demise, it was no lease,

have been invented:—"By this means a Statute made upon great consideration, introduced in a solemn and pompous manner, by this strict construction has had no other effect than to add at most three words to a conveyance."—1 Atk. 591. The remark nearly in the same words is adopted by Blackstone, who cites Lord Hardwicke in support of it.—2 Com. 336.

and, therefore, the tenant could not stand a moment against the ejectment that was brought, but was driven into the Court of Chancery, where the other party could just as little stand against him. How much inconvenience, expense, and delay, then, might be saved, if such an agreement were pronounced equivalent to a lease; and, in general, every thing were supposed done in one Court, which may be ordered as a matter of course to be done by another, reserving, no doubt, all objections on the head of fraud, mistake, surprise, and the like, which may be raised by pleading at law, just as easily as in equity.

In like manner, I would allow a Legatee to sue an Executor or Administrator for his legacy, and the Mortgagor to sue for his rights. It is always said, that in these and the like cases of active trusts, accounts must be taken; and so they must in every action where there is a matter of set-off against a demand. The old Action of Account might be greatly improved; and by its aid, and by reference to arbitration, where necessary, much that now goes to equity might be disposed of at law. The only reason why such cases as these, where the assets are to be marshalled, and cross claims considered, now go into the Court of Chancery, is, not for any superior fitness of that Court itself, but because of its appendage, the Masters' office, without which it would be no better able than the King's Bench to manage even long trusts, *chronic cases*, as they have been termed, though every suit in Equity might be thus named. Let the Court of King's Bench have an equal number of Masters—let Arbitrators be publicly appointed, to whom parties may refer before any expense has been incurred, as they do now after all the bill has been run up—nay, to whom they may go without even consulting an attorney—and if this machinery be found not enough effectually and properly to dispatch the business of the Court, let its machinery be increased, and sure I am it would be the cheapest and most powerful that ever was set up. It would do away with the ridiculous importance attached to a few words of conveyance;—it would oust the jurisdiction of the Court of Chancery in all the matters of which I have been speaking, and which it has from time to time drawn over from the common law, to which those matters originally belonged. Then the Courts of Equity would be left to exe-

cute their ordinary jurisdiction in matters of account requiring a long course of time, and minute and daily attention—cases calling, not for decision, but superintendence,—to the care of infants, idiots, and insolvent estates, and other matters which it would be impossible for a Court of Common Law effectually to take charge of.

Again, on the same principle of avoiding multiplicity of suits, why, in Ejectments, should two processes be requisite to give the plaintiff his remedy? As things now stand, after a man has succeeded in one action and established his title to the possession, he must have recourse to another, to recover that which he ought to have obtained by one and the same verdict that established his title—the mesne profits? Why could not the same jury settle the matter at once? Why is an individual driven to maintain two actions for the purpose of obtaining one and the same remedy? Or why should not the jury that tries the right, also assess the damage? Mr. Tennyson's Bill, which was intended to remedy some part of this evil, is only permissive; it ought to have been compulsory. It is partial, and it is only recommendatory, and its recommendations are not always attended to, because the lawyers, having the choice, do not think fit to pursue that which is the least profitable; they choose the two actions, when one would suffice for the interests of justice—for the interests of the plaintiff and defendant—for all interests, except those of the practitioners.

ii. Having considered how the number of needless suits may be diminished, I now proceed to the next head of my inquiry—to ascertain how, after their number is reduced as low as possible, and those only brought into court which ought to be tried, you may best Shorten the Suits brought, by disposing of them in the shortest time, and with the least expense. And this topic leads me to examine the principles which ought to be adopted for encouraging the parties to come to an amicable settlement as speedily as possible. The law cites as its warrant for certain steps in every suit, the injunction of Scripture—"Agree with thy adversary quickly, whilst thou art in the way with him, lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison. Verily I say unto thee, thou shalt by no means come out thence till thou hast

paid the uttermost farthing." The latter part of the text is applicable enough to the proceedings under the English law; and this scriptural advice to compromise ought to be constantly set before the eyes of suitors in all our courts, with the penalty denounced. Our law, however, no sooner adopts the principle, by allowing a party to imparl, than it departs from the spirit of it; for it must be observed, that the delay of imparlance is admissible, not "in the way," but in the Court, after arrest, and when the effect is only to produce unnecessary loss of time and fees equally unnecessary. Here, however, the sound principles are as obvious as before. Whatever brings the parties to their senses as soon as possible, especially by giving each a clear view of his chance of success or failure, and, above all things, making him well acquainted with his adversary's case at the earliest possible moment, will always be for the interests of justice, of the parties themselves, and, indeed, of all but the practitioners. It is the practitioners, generally, that determine how the matter shall proceed, and it may be imagined that their own interests are not the last attended to. The seeming interest of two parties disposed to be litigious, in many cases appears to be different from the interests of justice, although their real interest, if strictly examined, will not unfrequently be found to be the same. Now, justice is embarrassed by the disingenuousness of conflicting parties; justice wants the cases of both to be fully and early stated; but both parties take care to inform each other as little as possible, and as late as possible, of their respective merits. One tells as much of his case as he thinks good for the furtherance of his claim, and the frustration of the enemy's—so does the other, only as much of his answer as may help him, without aiding his adversary; and the Judge is oftentimes left to guess at the truth in the trick and conflict of the two. The interest of the Court of Justice being to make both parties come out with the whole of their case as early as possible, the law should never lend itself to their concealments. This remark extends to the proof as well as the statement of the case; an intimation of what the evidence is may often stop a cause at once. In Scotland, the law in this respect is better than ours, for no man can produce a written instrument on the trial without having previously shown it to his adversary. For want of this salutary rule I have often seen the most

useless litigation protracted for the sole benefit of practitioners. I was myself lately engaged in a cause, the circumstances of which will give the House an idea of the mischief. I was instructed not to show a certain receipt to the opposite party, as my client, the defendant, meant to nonsuit his adversary in great style, as he would call it. Well, the plaintiff (an executor) stated his case, and called his witnesses to prove the debt. I did not take the trouble to cross-examine, which would have been quite unnecessary. Equally so was it to address the Jury. I acknowledged the truth of all that had been sworn on the other side, but added that it was all useless, as I happened to have a receipt for the money, which had been paid to the testator. This, of course, put an end to the case. The sum sought to be recovered did not exceed twenty pounds, and the expenses could not have been less than a hundred. If that action had been brought in Scotland, it never could have come to trial, nor, indeed, been prosecuted beyond the mere demand: for, this receipt being shown, the claim would have been abandoned. Here some person or other, I will not say who, had an interest in the cause being suffered to proceed, and the law enabled him to accomplish his object. I think, Sir, the adoption of some such rule as the Scotch might be desirable. At least, it would be well to inquire how it acts in Scotland, and be guided by the result.

Next, the greatest encouragement should be given to compromises in all cases. At present the law recognises the principle to a certain extent, and permits money to be paid into Court, in some instances, as cases of contract and quasi-contract, where the damages are certain. But nothing can be less judicious than restricting the power of paying money into Court to those classes of causes; and excluding actions upon contract with uncertain damages, and actions upon tort, which are far more likely to be brought hastily, or obstinately defended, because they are accompanied by irritated feelings*. The earliest op-

* It has been held that money cannot be paid into Court in actions for breach of contract to deliver goods at a fixed price, (3 B. and P. 14) for dilapidations, (8 7 R. 47) on bond for money in a foreign currency depreciated (57 R. 87.) Chambre J. in the first and the strongest of these cases says, "it could not be done without violating every rule of practice." See Com. Pleader, C. 10.

portunity should be afforded in all cases to each party of getting rid of the suit on receiving or making compensation. I would, therefore, extend the right of paying into Court, or tendering amends, to all cases whatever. As the law now stands, it is only magistrates, officers, and other persons specially protected by the statutes of James I. and George II. who can thus proceed in actions for injury offered to the person or property.

But the great means of shortening litigation are to be found in an enlargement of our law of Arbitrament. I much fear that this, my next proposal, may seem strange, especially as coming from a professional man; for it goes directly to abridge the length and the expense of law proceedings in a great number of cases, and of preventing not a few from ever coming into Court. But it is calculated to secure justice effectually, without which no saving of expense or of time deserves the name of an improvement. Now I do not lay claim to any peculiar disinterestedness in broaching this matter. Few persons, it is true, have less interest in diminishing the amount of business in our Courts, because there are not many who gain more by it, and to whom, therefore, the abuses which I am describing, if such they be, are more profitable. But I really believe that lopping off needless litigation, by measures calculated to lessen the expense of procedure in all its branches, would greatly increase the number of lawsuits —real suits, which ought to be encouraged, as necessary to justice, but which at present are kept out of Court, by the double tax of cost and delay. The County Courts ought to be diligently reformed—their process extended to matters of a larger amount, and of greater variety—their officers rendered more able and effective. This improvement of itself would greatly diminish the number of trifling suits brought into the higher judicatures; and how can I, or any one conversant with the practice of the law, adequately express the benefits of having a speedy and cheap redress for petty wrongs, when we daily witness the evils of the opposite system! How often have I been able to trace bankruptcies and insolvencies to some lawsuit about ten or fifteen pounds, the costs of which have mounted up to large sums, and been the beginning of embarrassment! Nay, how often have we seen men in the situation described by Dean Swift, who represents Gulliver's father as ruined by gaining

a Chancery suit, with costs! The public, generally, are little aware of the number of petty actions forming the bulk of every cause paper at *Nisi Prius*. Professional men can tell how many now stand for trial concerning demands under twenty pounds; how few of these have been thus far ripened by the fostering care of the profession and the offices, under a hundred pounds expense. I made the Prothonotary, four years ago, at Lancaster, give me a list of fifty verdicts obtained at the Lent Assizes; the average was under fourteen pounds, including, however, two or three actions brought to try rights, where the damages were of course nominal. But if the money recovered amounted in all to less than nine hundred pounds, the costs incurred certainly exceeded five thousand pounds: fifty pounds a side being indeed a very low average of costs as between attorney and client. It is not too much to affirm that not above a tenth part of those fifty cases would ever have seen the Court at Lancaster had a right system prevailed; that is, if the parties who were to bear the heavy charge, whether of losing or seeming to gain (for the loss, generally speaking, only differed in degree) had been early apprized of their real situation, and exercised their own judgment upon the question of going on or settling betimes. An extension and improvement of arbitration is one of the remedies I have ventured to suggest, at least for further discussion. If arbitrators were publicly appointed, before whom parties themselves might go in the first instance, state their grounds of contention, and hear the calm opinion of able and judicious men upon their own statements, their anger would often be cooled, and their confidence abated, so as to do each other justice without any expense or delay. Such a tribunal exists in France, under the name of *Cour de Conciliation;* in Denmark it exists; and for certain mercantile causes in Holland also. If it be thought too great a change to introduce it here, in what I deem its best form, I think much good would arise from a modification of it—the appointment of Public Arbitrators, who might at all times sit and take references by consent, with process to compel the attendance of witnesses, and the execution of their awards. At least we should see all those cases taken before them at once, which are now brought at great cost into courts wholly unable to try them, and are uniformly greeted with the observation from both bench and bar—"Oh, an account and a set-off—a

hundred items—so many issues—no judge or jury can try it," after all the expense of trying it has been incurred *.

iii. The course of our inquiry has thus brought us, in the third place, to the Commencement of a Suit; and here the principles and rules which present themselves are as obvious as they are important. The first is to prevent the debtor's escape, and hinder him from delaying his creditor, by wilfully absenting himself. The second is to give the debtor due notice of the particular nature of the claim, so that he may defend himself if right, or yield if wrong, that is, if actually indebted. The third is, to give the debtor no unnecessary inconvenience, till found to be in the wrong, (that is, indebted,) as far as is consistent with due security to the plaintiff against a defendant likely to escape; taking care also to protect the defendant against a plaintiff likely to oppress him with costs and leave him without remedy on dropping the suit.

Now, against all these, which I consider cardinal virtues in this important stage of procedure, our laws offend most grievously. For, in the first place, we assume the defendant to be in the wrong, and not only so, but to be meditating flight from his country and his home; we, therefore, arrest him immediately, and cast him into prison, or compel him to find bail. A Member of this Honourable House, if, by the acceptance of an office, he happens, for the space of a few days, to be out of Parliament, may thus be arrested, and put to the most serious inconvenience. It might have happened the other day to the member for Oxford. If he bought twenty pounds' worth of goods on a Saturday, went to his villa and returned on Monday, on knocking at his door he might be met with an arrest, and he must then accompany the sheriff's officer to a lock-up house till he procured bail. He would then do what I understand is usual in such cases, send for his butcher and his baker, and get bailed; but a gentleman could not, after that, complain so well of the meat, or the bread, or the bills during the next half year. Certainly he would

* Out of the Statute of William, arbitration is no favourite of our law. An agreement or a covenant to refer is waste paper; no action can be maintained for a breach of either; and equity will not enforce the performance. (6 Ves. 818.) A great Judge said on this case, that he had since a cause he mentioned, made it a rule never to recommend an arbitration,

not be in a situation, the week after, to criticise his tradesman's conduct with a good grace. I have known worse inconvenience happen from such use being made of the law, at elections; indeed, when candidates have carried their adversary's voters to Norway, instead of letting them reach Berwick, we may believe they would not scruple to use the writ for a similar purpose. But however malicious or spiteful may be the motives of any one in so employing the process of the law, there being a probable cause of detention, and the process not being abused, no action lies against the wrong doer. If he have no accomplices, so as to fall within the charge of conspiracy, he is safe. To the wealthy, however, all these inconveniences are trivial; but how does such a proceeding operate on a poor man, or a tradesman in moderate circumstances? He has no facilities for obtaining bail; if he does, he pays one way or another afterwards for the favour; and if he cannot procure it he must go to prison. Perhaps no man ever holds up his head, or is the same man again, after having once been in prison, unless for a political offence. But, I ask, why should a man ever be arrested on mesne process at all? The Honourable Member for Montrose has brought this subject before the House, and he has my hearty thanks for it. On what ground of common sense does our law in this matter rest? Why should it be supposed that a man, owing twenty pounds, will leave his house, his wife, his children, his country, his pursuits; and incur voluntarily the punishment awarded for great crimes, by banishing himself for life? Yet the law always proceeds on the supposition that a man will run away the moment he has notice given him of an action for the debt. Some men might possibly act thus, but their conduct forms the exception, not the rule; and do you legislate wisely—do you legislate like men of sense—do you legislate with common consistency—when you denounce a penalty against all men in order to meet a case not likely to occur once in a thousand times?

What would be the effect of altering the law in this respect? Could its reformation injure any one? Certainly not; on the contrary, it would benefit all classes of the community. The very first consequence of such an alteration would be to make tradesmen less easy in giving credit, by rendering them more cautious. At present they are induced

to rely on the suddenness of personal arrest for compelling a payment of their demands, in preference to others, and thus to speculate upon the chance of payment from insolvent persons; so they enter into a competition—not an honest, praiseworthy competition, in the correctness of their dealings, or the goodness of their wares—but a competition in the credit they give to needy and profligate, or suspected and extravagant men, unable to pay any thing like the whole amount of the debts which the rashness or cupidity of tradesmen may allow them to contract. And on whom does the loss thus incurred by the tradesman finally fall? Not unfrequently on those who can and do pay; they have to answer for those who do not; they pay a sort of *del credere* in proportion to the loss incurred through giving credit—a species of insurance on all bad debts. Even the more respectable customers would be all the more regular in their dealings and economical in their habits, were they never tempted by easy credits to buy what they have not money to pay for.

My next objection to the present system under this head is, that no proceeding can take place in our courts unless there be an actual appearance. We outlaw a man to compel an appearance. Why do so? Why can we not proceed as in the case of ejectment, where a notice is left at the dwelling-house? Why can we not leave a writ at a man's house, stating what we sue him for; and only when we think him about to fly, call upon him to give surety? I repeat, why not send a writ to the known domicile or house of business of the debtor; a writ, too, which shall plainly describe the cause of action, instead of serving him with a writ that only tells him he is a prisoner for some reason or other, which in due time he will be informed of; and if he cannot be found, outlawing him after nine months' delay? This is done in Holland, a mercantile country, and in Scotland, a wary country, where too great charity is not generally shown to the debtor; at least the Scotch have not the reputation of being unnecessarily merciful on such occasions; yet a writ to take the debtor's person is only obtainable there if he be *in meditatione fugæ*. Our process of outlawry is, in its nature, extremely foolish; its object being to compel an appearance, which, after all, is not necessary, provided the party wilfully absents himself after due notice. If

a man chooses to keep away, why not proceed without him after such a delay, and so many services at his place of residence as shall ensure him having a knowledge of the action? As for any scruple about proceeding against an absent man, without making perfectly sure of his having notice, the present law has no right to say a word on the subject; for its process of outlawry is neither more nor less than a mean by which you harass an absent man, without even pretending to give him notice. He may be in the Greek Islands, on the coast of Africa, or in the back woods of America, and his creditor can outlaw him, and proceed to have his goods forfeited without his being aware of the transaction, and without the proceeds of the forfeiture necessarily benefiting any one but the Crown. In Exchequer cases, it is true, the debt and costs, not exceeding 50*l.*, are paid out of the fund which arises from selling the goods; in all other cases a party must apply to the Lords of the Treasury. Why should this be? What have the Lords of the Treasury to do with the legal remedy of plaintiffs in suits? Why send any one to the executive power for the redress which the judicial authority alone ought to administer?

iv. We are now to suppose the parties in Court, and called upon to state their cases, the claim of one, and defence of the other. Anciently this Pleading, as it is termed, was by word of mouth; but in more modern times it has been carried on in writing. Originally, too, Pleas were in French, afterwards in Latin, and, for a century past, by a great, but most salutary innovation, doubtless much reviled and dreaded in its day, they have been conducted in English. I must own that I approach the subject of Special Pleading, in the presence of my most worthy friend and learned instructor in that art, (Sir N. C. Tindal,) with some degree of awe. That excellent person's attainments in its mysteries are well known, and justly appreciated. He is intimately acquainted with the subject. The distrust of my own learning therein, while addressing him, is not lessened by my recollection of the praises lavished upon it by high authorities of past times. Lord Coke deemed it so delightful a science, that its very name was derived, according to him, from its pleasurable nature: "Quia bene placitare omnibus placet." Incapable of inventing a new pleasure, I would fain restore a lost one, by bringing back Pleading to

somewhat of its pristine state, when it gave our ancestors such exquisite recreation. Certain it is that our deviation from the old rules in this branch of the law has been attended with evil effects. Those rules, as Lord Mansfield once said, were founded in reason and good sense; accuracy and justice was their object, and in the details much of ingenuity and subtlety were displayed; but by degrees the good sense has disappeared, and the ingenuity and subtlety have increased beyond measure, and been oftentimes misdirected; nay, to such a pitch have the changes proceeded, that at last subtlety has superseded sense, accuracy and justice are well nigh lost sight of; and ingenuity is exhausted in devising pretexts for prolixity and means of stratagem. In these really hurtful innovations the courts of law have been the far too ready accomplices; and the legislature has been a most willing instrument to increase the evil, by sanctioning, almost as a matter of course, in each new act, the power of pleading the general issue: so that to call the modern practice by the name of *special* pleading is an abuse of terms. It can be only restored to its ancient condition, and made deserving, if not of Lord Coke's panegyric, yet of the more measured commendations of Lord Mansfield, by reviewing the entire system as it at present stands. My wish is, as far as possible, to revive the accuracy of the old pleading, without its niceties and verbosity; while pains are taken to improve it where this can safely be done, by adapting it to the advanced state of modern jurisprudence.

The precedents of the ancient pleaders, and the other rules recognised in their times, furnish the most valuable materials for this reform; and, indeed, it is chiefly from the science as they left it that the principles I am about to state are drawn. The first great rule of pleading should be to induce and compel the litigant parties to disclose fully and distinctly the real nature of their respective contentions, whether claim or defence, as early as possible. The second is, that no needless impediment should be thrown in the way of either party, in any stage of the discussion within the Court, whether plea, replication, or rejoinder, whereby he may be hindered to propound his case in point of fact, or of law. In the third place, all needless repetitions, and, generally, all prolixity should, as well as all mere reasoning, which neither simply affirms nor denies any

proposition of fact or of law, be prevented; and all repugnant or inconsistent pleas should be disallowed, as well as all departure from ground once taken.

1. That these were the principles on which the ancient pleaders bottomed their system entirely, I will not affirm; but upon them it was mainly built; and I regret to say, that the last century and a half has witnessed great and prejudicial alterations in the original plan: so that the record, in the great majority of cases, instead of exhibiting a plain view of what each party is prepared to prove, contains an endless multitude of words, from which, if the real matter in dispute can be gathered at all, it is only by guess work, or by communications out of the record relating to things, of which it gives not even a hint. Let us look into this a little more narrowly. The Count of a Declaration should convey information as to the subject of the action; but it conveys no precise knowledge of the plaintiff's demand, or indeed of what the suit is about. Take the instance of the Common Counts, as they are justly termed, in Assumpsit, being those constantly resorted to; and take the most common of these, the count for Money had and received. I will take no advantage of the audience I speak before being unacquainted with legal niceties, in order to make merry with the venerable formalities of the art. All lawyers know how easy it would be in this place to raise a smile, at the least, by recounting the little fooleries of our draftsmen: but I disdain it; and will treat the subject precisely as if I were addressing professional men. The plaintiff declares, that the defendant, being indebted to him for so much money had and received to the use of the said plaintiff, to wit, one thousand pounds, undertook and faithfully promised to pay it, but broke his engagement; and the count is thus framed, the self-same terms being invariably used, whatever be the cause of action which can be brought into Court under this head. Now, observe how various the matters are which may be all described by the foregoing words. In the first place, such is the declaration for money paid by one individual to another, for the use and benefit of the plaintiff; this is what alone the words of the count imply, but to express this they are rarely, indeed, made use of. 2dly, The self-same terms are used on suing for money received on a consideration that fails, and used in the same way to

describe all the endless variety of cases which can occur of such failure, as an estate sold with a bad title, and a deposit paid; a horse sold with a concealed unsoundness, and so forth. 3dly, The same words are used when it is wished to recover money paid under mistake of fact. 4thly, To recover money paid by one person to a stakeholder, in consideration of an illegal contract made with another person *. 5thly, Money paid to revenue officers for releasing the goods illegally detained, of the person paying †. 6thly, To try the right to any office, instead of bringing an assize ‡. 7thly, To try the liability of the landlord for rates levied on his tenant. What information, then, does such a declaration give? It is impossible, on reading this count, to say which of the seven causes of action has arisen; and it is not merely those seven, for each one of them has a vast number of varieties, which are declared on in the same words. In actions of Trover the case is even worse. Suppose the case of a plaintiff suing for any chattel, as a gun, the declaration will be such as may apply equally to at least eight different heads, under each of which are many different causes of action. The words in all would be the very same—that the plaintiff was possessed of a gun, as of his own proper goods and chattels; that he accidentally lost it; that the defendant found it, and converted it to his use. Now this count describes only one case, that of a gun lost by its owner, and detained by the finder. But it is employed to mean, 2ndly, That the gun has been taken by the defendant, under pretence of some title, or in any way not felonious. 3rdly, That it was deposited with the defendant, who refused to deliver it up. 4thly, That it was stopped in transitu, the price not having been paid. 5thly, That the plaintiff is the assignee of a bankrupt, and seeks to recover the gun, as having been sold after the bankruptcy of the vendor. 6thly, That the plaintiff has been improperly made a bankrupt, and sues the assignees to try the bankruptcy. 7thly, That his goods have been unlawfully taken, and he sues to try the validity of an execution, on any of the various grounds of fraud, &c. which impeach

* 1 B. and P. 3. Ib. 296.
† 4 T. R. 485.
‡ Str. 747. Carth. 95. 1 T. R. 255.

the validity of the process. 8thly, That the gun has been misdelivered, or detained, by a warehouseman or carrier. All those causes of action differ from each other as much as different things can differ, and yet they are all stated in the declaration the same way, and signified under the same form of words.

The pleadings in cases where it might be expected that the greatest particularity would be given to the statement, actions upon Torts to the Person, are somewhat, but for the most part, not remarkably more definite and precise in their description. The declarations on the seduction of a wife, servant, or daughter, assault, and false imprisonment, are drawn so that you can say, no doubt, what the action is about, which you hardly ever can in cases of Assumpsit or Trover; but the same form of words is used, whatever the particular shape of the cause may be. Of the circumstances peculiar to the transaction, the pleadings tell the defendant nothing—they tell the counsel nothing—they tell the judge nothing. It may be said that the defendant must know the cause of action himself; but that does not always follow, especially if (which may be presumed barely possible, though it seems never to be thought so) the allegations are groundless. There is, however, one person who must know the cause of action, and that is the plaintiff. He ought, for the satisfaction of all concerned, to state it distinctly. The same may be said of the counts in Trespass, for taking goods. In Trespass *quare clausum fregit*, perhaps, the description of the wrong done is more specific. But it happens that the circumstances here are of far less importance; damages are not in question; a shilling or so is to be recovered, the object of the action being almost always to try a right of property or an easement. In all other cases of trespass, where a knowledge of the wrong suffered is most material, the parties are left to fight, and the Court to decide, in the dark; but in the case I have just alluded to, where a knowledge of the circumstances in which the trespass was committed is immaterial, every thing is told them of which it is wholly unimportant that they should be informed; in a cumbrous way, no doubt, and with much fanciful statement, but still it is told. Actions for Slander and Libel, for Malicious Prosecutions, and Malicious Arrest, or holding to bail, with others on the Case, are very

particular, and form, certainly, an exception to the ordinary course of pleading; at least, as far as the declaration goes; no further, as we shall presently see—for I now proceed to the next stage of the pleadings, namely, to the Pleas which the defendant puts upon the record in answer to the plaintiff's complaints.

In this stage of the cause we encounter the same evils, but in greater abundance; for they affect those Actions on the Case where the count is most precise. Generally speaking, it may be said, that if the plaintiff tells us nothing in his declaration, the defendant, in return, tells us as little in his plea; in that respect, at least, they are even. This is, perhaps, a consequence of the former evil; but, be that as it may, it ought to be remedied. The plaintiff ought to tell the defendant the real nature of his complaint, and the defendant ought to make him equally acquainted with the nature of his answer. If this were always done, perjury would not so often be committed; every thing intended to be proved would be stated on each side; and the parties, knowing the evidence on which the respective statements must be established, would have an opportunity of examining into the character of the witnesses, and of procuring the best evidence to elucidate the point. At present, the mystery of pleading leaves them in doubt; and the vague and indistinct statements on the record, unaccompanied by other information, open a door to the entrance of falsehood in the witnesses, far wider than any you could open, by enabling them to get up proofs in answer to those expected from the opposite side. Whenever the parties fight each other by trick, on the record in the first instance, fencing to evade telling their grounds of contention, they renew the fight afterwards by perjury in Court. I will now give the House some instances of the vagueness of this part of pleading.

In the *indebitatus assumpsit*, from which I took my first example, the general issue is *non assumpsit*. Now, under that plea no less than eight different defences may be set up; as, for instance, a denial of the contract, payment, usury, gaming, infancy, coverture, accord and satisfaction, release. All these defences are entirely different, and yet they are all stated in the self-same words. So, too, in the action of trover; take our former case of the gun: the defendant, under the plea

of "not guilty," may set up as a defence, that he is a gamekeeper, and took it by virtue of the statute of Charles II.*; or that he had a lien upon it as a carrier for his general balance, and had, therefore, a right to detain it; or a particular lien for work done upon it; or that he had received it as a deposit, and was entitled to keep it; or that he took it for toll†, or detained it till passage money due by its owner were paid ‡; or the reward due for saving it from shipwreck were given §. Any one of these defences may be concealed under the plea of "not guilty," without the possibility of the plaintiff discovering which it is that his adversary means to set up; so that every body will, I think, agree with me, that if the count teaches the Court and opposite party little, the plea teaches them not a whit more.

It is of these things that Mr. Justice Blackstone must be speaking, when he thus eloquently closes his account of special pleading and actions (not otherwise remarkable for accuracy ‖) with a panegyric upon that perfection which it shares in his eyes with all the rest of our system.—"This *care and circumspection* in the law, in providing that no man's right shall be affected by any legal proceeding *without giving him previous notice*, and yet that the debtor shall not, by receiving such notice, take occasion to escape from justice; in requiring that *every complaint be accurately and precisely ascertained in writing*, and be *as pointedly and exactly answered*; in *clearly stating* the question either of law or of fact; in deliberately resolving the former after full argumentative discussion, and indisputably fixing the latter by a diligent and impartial trial; in correcting such errors as may have arisen in either of those modes of decision, from accident, mistake, or surprise; this *anxiety* to *maintain* and to *restore* to every individual the enjoyment of his civil rights, without intrenching upon those of any other individual in the nation—this *parental solicitude*, which *pervades* our *whole* legal constitution, is the genuine offspring of that spirit of equal liberty which is the singular felicity of Englishmen ¶."

* St. 22, 23 Car. II.—Dawe and Walter in Bull. N. P. 48.

† Sir W. Jones, 240. ‡ 2 Camp. 631. § Lord R. 393.

‖ *e. g.* His giving as an example of Assumpsit, an undertaking without consideration.

¶ 3 Com. 423.

2. The Inconsistency of many of our rules of pleading fomrs next head of complaint to which I shall direct your attention; and it is just as manifest as the vagueness and indistinctness I have been pointing out. Why are infancy and coverture to be given in evidence under the general issue, while other defences of a similar description must be pleaded specially, as the statute of limitations always, and leave and license in trespass? If it is right that specific defences, of which your general plea gives your ponent no notice, should be couched under that plea, why ould you be compelled to give notice of other averments before eing suffered to prove them? Why do you, in one case, mul-iply pleas, which, in the other, your own practice declares to be unnecessary? One or other course, the vague or the definite, the prolix or the concise, may be fitting; both cannot be right. Nay, there is often an option given as to the same thing; infancy, coverture, release, accord and satisfaction, and others, may either be given under the general issue in assumpsit, or pleaded. Why, this choice amounts to no rule at all! If a ground of defence is ever to be pleaded specially, why not always?

3. Akin to this inconsistency of principle is the variety of Repugnant counts and pleas allowed in all cases whatever. Where there are ten different ways of stating a defence, and all of them are employed, it is hardly possible that any three of them can be true; at the same time their variety tends to prevent both the opposite party and the court from knowing the real question to be tried. Yet this practice is generally resorted to, because neither party knows accurately what course his opponent may take; each, therefore, throws his drag-net over the whole ground, in hopes to avail himself of every thing which cannot escape through its meshes. Take the case of Debt on bond. The first plea in such an action, almost as a matter of course, is the general issue, *non est factum*, whereby the defendant denies that it is his deed; the second as usually is, *solvit ad diem*—he paid it on the day mentioned in the bond, a circumstance not very likely to happen, if it be not his deed; the third is *solvit post diem*—he paid it after the day; a thing equally unlikely to happen, if it be not his bond, or if he paid it when due; and a fourth often is, a general release. What can the plaintiff learn from a statement in which the defendant first

asserts that he never executed the deed, and next that he not only executed it, but has moreover paid it off? Where pleas are consistent with each other, it may be well to let them be pleaded in unlimited abundance: where they are not only not consistent, but absolutely destructive of each other, it would be a good rule to establish that such pleas should not be put together upon the record, at least without some previous discussion, and leave obtained. The grounds of action are often stated with almost as great inconsistency, almost always with greater multiplicity in the declaration. I recollect that at York, many years ago, it was my duty, as junior counsel, to open the pleadings in an action brought upon a wager which had been laid upon the life of the Emperor Napoleon. I stated to the jury in the usual way, that the defendant, in consideration of one hundred guineas, agreed to pay the plaintiff a guinea a-day during the life of one Napoleon Buonaparte, and so forth, alleging the breach. Thus far all was well, and the audience were not disturbed; but there was not much gravity among them when I went on to state the second count, averring another wager on the life of "one other Napoleon Buonaparte;" and, indeed, though one in those days was quite enough for the rest of the world, two did not satisfy the pleader, who made mention of a third and a fourth Napoleon.

I know that it is frequently said these allegations deceive nobody, and their vagueness and repugnancy keep no one in the dark, for each party contrives to have a good guess of what his adversary means. That this is not the case in many instances I know; that it takes place more frequently than might be expected, I am ready to admit. But what vindication is this of the system? If any thing like precise information is obtained in such cases as I have described, it is most assuredly not from the record, but in spite of the record; it is by travelling out of it—by seeking elsewhere for what the record does not give, or for correcting the false impression which it conveys; consequently, this defence of pleading is the very humble one, that it is useless, and, were it not for the cost, would be harmless.

4. Before the statute of the 4th of Anne, no man was allowed to plead double; the plaintiff might have as many ways of stating his case as he pleased, but to each count the de-

fendant could only give one answer. By that statute he may, with leave of the Court, plead two or more distinct matters. Though that leave was formerly granted or refused at the discretion of the Court, it is now regularly given as a matter of course. There is, however, a fee to be paid to the office for it, and also a fee to council for signing the rule to obtain it, which, of course, implies a charge by the attorney also. I think every practitioner is fully aware of the consequences. Beside the expense, the utterly needless expense, the mischief of it is great and undeniable. I believe in my conscience, that many an attorney's clerk, who afterwards proceeds to still greater frauds, begins his career of crime by stopping this fee to council on its way. It is not necessary that the barrister should sign his name; and a knowledge of that fact among attornies' clerks and barristers' clerks seduces into a course of petty embezzlement, which leads to larger peculations in the long run, and ends in all the dishonesty which marks the life of the disreputable practitioner. According to the principles before laid down, such rules as this, to plead double, and all others of the kind, ought at once to be abolished, and the parties allowed to do, without any application, or rather supposed application, to the Judge, and without any expense, what they thus obtain for the mere payment of money. But to proceed: though the defendant may plead, the plaintiff cannot reply many matters. For instance, in *indebitatus assumpsit*, if the defendant pleads, first, that he never made any promise, and next, that he was an infant when he made the promise, the plaintiff must either admit the infancy, and set up a subsequent promise, or deny the infancy altogether, and re-affirm the original promise; for he cannot both deny the infancy and set up a subsequent promise. Now, I will ask the House, why, if the defendant may plead several matters, the plaintiff should not reply several matters? There must be some limit, I allow, set to the replication, otherwise, at each stage of the pleading, there would be a multiplication of issues, like the puzzle of the nails in a horse-shoe; but, surely, there can be no harm in allowing each separate ground of defence to be met both by a denial and an answer; giving the plaintiff a general replication to make the defendant prove his plea, and one special replication: I mean, as long as you allow the defendant to multiply, with-

out restraint, his grounds of defence; for the power of pleading repugnant pleas being restricted, there will be the less prolixity occasioned by enlarging the power of replying.

5. The restriction upon Demurrer, or pleading to raise an issue in law, appears still less founded in principle. By demurring, a party is obliged to confess the facts to be true as stated by the opposite party, and confine himself to a denial that, by law, those facts warrant the inference against him to raise which they are stated. If I am alleged to have made a particular promise, I may deny that I made it, which would raise a direct issue on the fact: or I may say that, though I did make it, such a promise is not binding in law, which raises an issue on the law. These two denials, however, cannot both be given; I must take my choice, either to admit the law or the fact. How is this in common life? If I am charged with any thing wrong, as using certain blameable expressions, I may deny the words altogether, but may add, "Admit, for argument sake, I did utter them, they were wholly harmless—wholly free from the meaning affixed to them." In truth, men are demurring all day long, when they are conflicting or disputing with one another, and no one ever dreamt of tying down his antagonist to an admission of the fact, because he had argued against the inference. If any thing can make the rule more objectionable, it is the gross inconsistency which it exhibits to the last rule I mentioned, the permission given to a defendant to raise as many repugnant issues of fact as he pleases. Why should a party be allowed to say, "In point of fact, I deny the promise—but if I made it, six years have elapsed—or I made it under age," and be prohibited from saying—"In point of fact, I deny the promise; but, if I made it, there was nothing binding in point of law?" The two defences, as far as their duplicity goes, are precisely similar; and as it must be allowed that, before double pleading was introduced, the restriction upon demurring was consistent with the general principles of the system, so, if repugnant pleas were forbidden, the objection, in respect of consistency, to a demurrer admitting the facts pleaded, would be removed. On other grounds, however, it would still be quite wrong. I admit that part of the mischief occasioned by the rule may be remedied after verdict, the objection being on the record. But beside that

this remedy cannot, in every case, be applied, there has been the delay and expense, to say nothing of the absurdity of a trial of facts, which, if proved, amount to nothing. Why should not the Court first determine the disputed law, and then, only if it becomes necessary, try the truth of the facts? In Equity pleading it is so. Why not in Law too?

6. A very great amendment of the law would be, to permit all Formal Errors to be Amended, even at the very last stage of the cause. No one should be turned round on a mere Variance; no one should be defeated on a mere verbal mistake, as it was my lot to be lately, in an indictment, the history of which will aptly enough introduce this head of remark. It was a prosecution for perjury: the jury was sworn, the case was opened, witnesses were examined, and documents read, when a variance was discovered between the affidavit, on which the perjury was assigned, and the copy of it which formed part of the record: in the one the word "grandmother" was used: in the record the syllable "grand" was omitted, and only the two last syllables "mother" were inserted. This was, of course, fatal to the indictment. There can be no doubt that the perjury, which consisted in the denial of a payment, was equally committed, whether that supposed payment was made to the mother or the grandmother; yet, owing to this utterly unimportant error, all the trouble of the Court, and all the expense of the prosecutor, were rendered perfectly useless, and the ends of public justice frustrated. In ninety-nine cases out of every hundred—indeed, I might say, in nine hundred and ninety-nine cases out of every thousand,—in which parties are turned round upon variances, the materiality is not greater than in that which I have just mentioned to the House. The improvement which I would suggest is to allow nobody to be turned round upon a variance, except at the discretion of the Judge. Where it is clear that the record by its variance from the evidence has deceived the party, then the discrepancy ought to be fatal; but because this may happen once in a thousand times, ought we to legislate upon the exception, and introduce a general system of quirks and niceties upon sorry trifles—the greatest opprobrium of the law? Furthermore, I would allow no failure of a case from the want of a sufficient stamp being affixed to any instrument used in evidence. In a case which occurred not long since, my Lord Dudley was

turned round, because it was said there were a few words more in the instrument than we had counted, and the stamp was some half-crown below the amount required. At the trial of the cause, it was not disputed by us, that the words were more in number than the stamp covered; we took for granted that our adversary had reckoned right, and we did not require the process of addition to be gone through in Court; it was afterwards found out that the defendant had counted the words wrong, and that they fell short of the number mentioned in the Stamp Act. The plaintiff, in consequence, got a rule for a new trial, and soon after he had a verdict. But suppose we had been wrong and our adversary right, what difference would that have made in the justice of the cause, which was truly an undefended one? I would allow the judge to inflict a penalty of 20*l.*, of 50*l.* if necessary, to protect the revenue, instead of 10*l.* for the want of a stamp; but I would not allow the party to be turned round, and to lose his trial, because he had got a wrong stamp, or no stamp at all, affixed to his agreement or deed.

Let not the House suppose that grievances, such as I have been describing to flow naturally from the present system, are imaginary and theoretical; I can assure the House, from my own daily experience, that they are not: they produce constantly a cost or a delay, amounting to the positive denial of justice. To give an illustration of some of the parts of the system in its workings, I shall read the letter which I hold in my hand, from an eminent practitioner in the law. The widow of a Welsh clergyman is obliged to bring an action upon a mortgage-deed for the payment of the mortgage-money and interest, and for performance of the covenants in the deed. She might have foreclosed by a proceeding in equity; but preferring the delays of the King's Bench to those of the Chancery, she brought an action of debt of the simplest possible kind, both in its nature, and in the form of the proceedings; and the House shall now hear from her respectable solicitor himself, what was the progress and termination of that action:—"The "defendant was a Member of Parliament, and some delay, as "is usual with such defendants"—(I beg pardon, Sir—of course, I am not answerable for the terms of the letter,)—"took place in enforcing an appearance. When the declaration "was delivered, the defendant demanded oyer of the bond,

" and that obtained, made as many applications as the judge " would allow for further time to plead. At the expiration of " this period, he pleaded—1st, *Non est factum*—2d, *Solvit ad* " *diem*—3d, *Solvit ante diem* *—4th, *Solvit post diem*—5th, " Performances. It is needless to add, all these pleas were pure " legal fictions. The plaintiffs, in their replication, took issue on " such pleas as concluded to the contrary, and assigned breaches " of the condition, according to the statute. The breaches as- " signed were, non-payment of the principal—non-payment of " the interest—and non-performance of the covenants of the " mortgage-deed. The defendant, for the purpose of splitting " the second into two issues, and thereby creating the delay " of an issue in law, to be tried before the Court *in banco*, " and an issue in fact, to be afterwards tried at *Nisi Prius* " before a jury, demurred to the last assignment of breaches—a " sham demurrer for delay. The plaintiffs joined in demurrer, " and made up and delivered the paper-book and demurrer- " book. The defendant, in order to entitle himself to bring a " writ of error for delay, without giving bail, then suffered " judgment to go by default, for not returning the paper and " demurrer-book. The consequence of this was, that all the " pleas, replications, rejoinders, and demurrer, became useless, " and were struck out of the record; and the plaintiffs had to " execute a writ of inquiry before the Chief Justice, under " the statute of William III., to assess damages on the breaches " suggested. But these proceedings had answered the purpose " of harassing the poor defendant with useless and expensive

* Had the plaintiff's pleader chose, the law enabled him to demur to this plea (but it would have increased the delay and served the defendant's purpose.) The ground of the doctrine, that paying before the debt falls due is no answer to the action seems not very intelligible, but it is now settled law.—The reason assigned (in Cass v. Tryon—though there are cases *contra*, see Cro. Eliz. 143, Dyer, 222, and also 14 Anne, c. 16. § 12.) is that if the verdict on that issue goes for the plaintiff, it by no means follows that he has a right to recover, for he may have been paid at or after the day. But so it may be said of a plea of infancy—or, indeed, of *solvit ad diem* itself —for though the verdict negative that plea, *non constat* that there may not have been duress or a release. The true test of a plea (or an affirmative issue tendered at any stage of the pleadings) plainly is this—if its being found for him who pleads it decides the matter in his favour, no new fact being averred on the other side, it is good—if not, bad.

"litigation, swelling the pleadings from five folios to one hun-
"dred and eighteen; and they had already accomplished much
"delay, having occupied four terms: the bill was filed in Tri-
"nity Term, the pleas and replication in Michaelmas Term,
"the demurrer and joinder in Hilary Term, and the final judg-
"ment was obtained in Easter Term. The defendant then
"brought a writ of error, without the slightest pretence of
"actual error; and that proceeding, of course, delayed the
"plaintiffs four terms longer. All this was necessarily at-
"tended with expense, grievous to a poor person, as the party
"in this case was. The costs of the judgment were taxed at
"80*l.* 4*s.*, and the costs in error at 19*l.* 10*s.*, making together
"99*l* 14*s.* for the costs, and two years for the delay in *an unde-*
"*fended action*, in which the length of the declaration was five
"folios! Comment on such a case would be a waste of words."—
It would indeed! But if it be wanted, Blackstone shall be the commentator. "So tender and circumspect," saith he, "is the law of England in providing that no man's right shall be affected by any legal proceeding; in requiring that every complaint be accurately and precisely ascertained in writing, and be as pointedly and exactly answered; in clearly stating the law and the fact; in deliberately resolving the former and indisputably fixing the latter by a diligent trial; in correcting such errors as may hav arisen in either decision, and in finally enforcing the judgment when nothing can be alleged to impeach it! So anxious it is to maintain and restore to every individual the enjoyment of his civil rights, without intrenching upon those of any other individual in the nation,—so parentally solicitous is our whole legal constitution to preserve that spirit of equal liberty, which is the singular felicity of the British nation."

I must now tell the House, that beside the 99*l.* 14*s.* taxed costs, this poor widow had to pay 30*l.* for extra costs, which she never received a shilling of from the defendant, and which she had to defray after he had handed his share of the cost over to the plaintiff's attorney. In prosecuting an undefended cause she paid this sum, and if it had so chanced that the defendant, instead of being merely a distressed man, (for I happen to know the gentleman in question, and that though a distressed, he is not an oppressive man;) if he had been such a character as was once known in the northern provinces, and as

we have had represented on the scene,—pertinacious, litigious, grasping, oppressive, with a long purse to back him in defending acts of injustice and cruelty,—he would have resisted at every stage of the action by council and witnesses; he would have had the demurrer argued before the Court; he would have tried the issue at Nisi Prius; he would have carried his Writ of Error through the Exchequer Chamber into the House of Lords; and then the extra costs, instead of thirty pounds, would have amounted to I dare not say what sum, knowing that costs to the amount of hundreds have been incurred to recover a debt of twenty pounds. "So tender is the law of England in providing that no man's right should be affected by any legal proceeding—so parental its solicitude to maintain and restore to every individual the enjoyment of his civil rights, without intrenching upon those of any other person whatsoever!"

Sir, after Mr. Justice Blackstone had written his beautiful and, in part, profound Commentaries, there occurred a case, which he published himself in his Reports, and which must, I conclude, have happened after the panegyrics were composed. I marvel much, however, that, when a subsequent edition of his Commentaries appeared, he did not correct the error into which he must then have been convinced that he had been betrayed, by his excessive admiration for the forms and technicalities of our common law. The case, as reported by himself, was, in substance, this:—A gentleman of the name of Robinson, in Yorkshire, was minded to try the resources of the law in an action of trespass against some poor men, who lived near him. In the course of it, reference was made to the Master, to report by whose fault the pleadings in the action had extended to a most enormous and unprecedented length. The Master reported, that in the declaration there were five counts; that twenty-seven several pleas of justification were pleaded by the defendants, which, with replications, traverses, new assignments, and other monuments of pleading, amounted at length to a paper book of near two thousand sheets. He was of opinion that the fault lay principally in the length and intricacy of the declaration, the action being only brought to try whether the freeholders and copyholders of the manor, whereof Robinson was lord, were entitled to common in a ground called the In-

closure. He likewise reported that the declaration was so catching, by ringing changes upon the several defendants, and the several names of the ground, that it was necessary for the defendants to guard every loophole; which made their pleas so various and so long, especially as Mr. Robinson had declared that he had drawn the declaration in this manner "on purpose to catch the defendants, and that he would scourge them with a rod of iron." The Court was very indignant at this abuse of the technicalities of the law, and the Book says that Mr. Robinson appeared *in propria persona*, to show cause against this report, "no other council caring to be employed for him." The Court ordered Mr. Sergeant Hewitt and Mr. Winn to settle an issue, which they did in a quarter of an hour, and in the space of a quarter sheet of paper, instead of two thousand folios. Talk of scourging with a rod of iron! Why should he think of it? The lash of parchment, which is applied to all suitors in our courts of law—that flapper, which keeps them awake to the course of justice by the expense and anxiety it inflicts,—that truly parental corrector of human errors, manufactured in the engines of practice and pleading, which, pretending to enlighten, serve only to keep the Court and the suitors in the dark as to what they are conflicting about, and oftentimes teach them nothing certain, but that they are ruined, and cannot tell how:—this parchment lash was a far more safe as well as powerful scourge for the rich and crafty lawyer, and a far more deadly one for his poor and simple antagonists, than any rod of iron which he could have forged in all Colebrookdale!

v. The parties being now supposed at issue by the result of their pleadings, the facts in dispute are to be Tried by a Jury through the medium of Evidence, and the comments of the council and judge. Before I enter, therefore, on the head of Evidence and Proceedings, or Trial generally, the House will permit me to say a few words upon the subject of Juries, the rather because this venerable institution has, I lament to say, been of late years attacked by some of the most distinguished legal reformers. Speaking from experience, and experience alone, as a practical lawyer, I must aver that I consider the method of juries a most wholesome, wise, and almost perfect invention, for the purposes of judicial inquiry. In the first

place, it controls the Judge, who might, not only in political cases, have a prejudice against one party, or a leaning towards another, but might also, in cases not avowedly political, where some chord of political feeling is unexpectedly struck, if left supreme, show a bias respecting suitors, or, what is as detrimental to justice, their council or attornies. In the second place, it supplies that knowledge of the world, and that sympathy with its tastes and feelings, which Judges seldom possess, and which, from their habits and station in society, it is not decent that they should possess, in a large measure, upon all subjects. In the third place, what individual can so well weigh conflicting evidence, as twelve men indifferently chosen from the middle classes of the community, of various habits, characters, prejudices, and ability? The number and variety of the persons is eminently calculated to secure a sound conclusion upon the opposing evidence of witnesses or of circumstances. Lastly, what individual can so well assess the amount of damages which a plaintiff ought to recover for any injury he has received? How can a Judge decide half so well as an intelligent jury, whether he should recover as a compensation for an assault fifty pounds or a hundred pounds damages?—or for the seduction of his wife or daughter, fifteen hundred, or two thousand, or five thousand pounds damages? The system is above all praise—it looks well in theory, and works well in practice—it wants only one thing to render it perfect—namely, that it should be applied to those cases from which the practice in equity has excluded it; and that improvement would be best effected by drawing back to it the cases which the courts of equity have taken from the common law, and which they constantly evince their incapacity to deal with, by sending issues to be tried whenever any difficulty occurs.*

I shall not press this subject further, for I begin to feel that I shall be exhausted with the labour I have undertaken, and I fear that your patience may be exhausted with my strength. I will, therefore, proceed to the great subject of Evidence; and, first of all, we are met by the question,—Ought the testimony

* It is fitting that we speak with reverence even of the unfounded doubts of so great a man and profound a Jurisconsult as Mr. Bentham. He is, beyond all dispute, the first who taught men to examine the foundations of our Institutions, and the abuses that have grown up with them. Sir S. Romilly was the first to question them in Parliament.

of the Parties to be excluded? The strong opinion expressed by some great authorities on this head requires that, before entering on the Law of Evidence, we should touch the fundamental rule which draws so broad a line between parties and witnesses. It is clear that the law on this head requires revising; it is not so clear that the reform will be best accomplished by receiving every one's testimony in his own cause. The friend of exclusion proceeds upon the supposition, that the situation of a party differs wholly from that of another person; whereas it only differs in the degree of the bias arising out of interest, from the situation of many who are every day allowed to depose. He also maintains that it is dangerous to receive the party's evidence, because of the temptation afforded to perjury. That there is much in this argument, I admit; but, speaking from my own observation, I should say that there is more risk of rash swearing, than of actual perjury—of the party becoming zealous and obstinate, and seeing things in false colours, or shutting his eyes to the truth, and recollecting imperfectly, or not at all, when his passions are roused by litigation. I shall not easily forget a case in which a gentleman of large fortune appeared before an able arbitrator, now filling an eminent judicial place, on some dispute of his own, arising out of an election. It was my lot to cross-examine him. I had got a great number of letters in a pile under my hand, but concealed from him by a desk. He was very eager to be heard in his own cause. I put the question to him: "Did you never say so and so?" His answer was distinct and ready,—"Never." I repeated the question in various forms, and with more particularity, and he repeated his answer, till he had denied most pointedly all he had ever written on the matter in controversy. This passed before the rule of evidence laid down by the Judges in the Queen's case; consequently I could examine him without putting the letters into his hand. I then removed the desk, and said, "Do you see what is now under my hand?" pointing to about fifty of his letters. "I advise you to pause before you repeat your answer to the general question, whether or not all you have sworn is correct." He rejected my advice, and not without indignation. Now those letters of his contained matter in direct contradiction to all he had sworn. I do not say that he perjured himself,—far from it. I do not believe that he intentionally swore what

was false; he only forgot what he had written some time before. Nevertheless he had committed himself, and was in my client's power. I said, "My advice is, that you pay the whole demand before to-morrow." This only increased his anger; he "scorned the offer and the imputation." Turning to his solicitor, I asked if he concurred in his client's view of my proposition. "Very far from it," was the answer. The meeting broke up, the arbitration terminated, and the money was paid the next morning. Now had this trial occurred in an open court, the gentleman would have been ruined for ever; he would have had no opportunity of explaining, nay, all explanation would have been useless; if he had escaped prosecution, he would have been suspected of perjury ever after, when all that he was guilty of was too much eagerness, too much impetuosity, and a little wrong-headedness, arising from confidence in his own cause, and a desire to defeat his adversary. But this anecdote is fruitful in matter of reflection. On the one hand we see the risks of admitting impure or uncertain evidence, and the probability of receiving wrong impressions respecting a witness's bias while undergoing the question; on the other hand, we perceive, that, to a certain degree, the same consequences flow from our present practice of allowing such evidence in some cases, and not in all. Our system is clearly inconsistent in this particular. At least we ought to be uniform in our practice. Why refuse to allow a party in a cause to be examined before a jury, when you allow him to swear in his own behalf in your Courts of Equity, in your Ecclesiastical Courts, and even in the mass of business decided by Common Law Judges on affidavit? Why is the rule reversed on passing from one side of Westminster Hall to the other, as if the laws of our nature had been changed during the transit; so that no party being ever allowed before a Jury to utter a syllable in his own cause, in all cases before an Equity Judge parties are fully sworn to the merits of their own cause? If it be said that there is no cross-examination here, I answer, that this is a very good argument to show the inefficacy of Equity proceedings for extracting truth from defendants, but no reason for following a different rule in the two jurisdictions. Indeed, the inconsistencies of our system in this respect almost pass comprehension. All pleas at law are pleaded without any restriction upon their falsehood; in Equity the defendant an-

swers under the sanction of an oath. But Equity is as inconsistent with itself as it is different from Common Law; for the plaintiff may aver as freely as he pleases, without any oath or any risk at all. When an inquiry is instituted into these things, I do venture to hope that something will be done to diminish the number of matters decided on affidavit. This is, indeed, a fruitful parent of fraud and perjury, and not only a great departure from the principle which excludes the testimonies of parties, but an abuse of all principle; for he who would allow such testimony, under due restraints, may very naturally argue that suffering men to swear for themselves, without being exposed to cross-examination, must lead to endless equivocation, suppression of truth, and all the moral guilt, without the danger, of actual perjury. If it be right to exclude the parties from giving evidence in their own behalf in one case, it is not right to admit them to give evidence in others; and more especially is it absurd to admit them where they have the power of deceiving with impunity, and exclude them where they would swear under checks and restraints.

1. The first matter that presents itself to my attention, when I come to the subject of Evidence, is the great question (intimately connected with what I have been discussing,) how far Interest should disqualify a witness. The ancient doctrine upon this point has, of late years, been so much restricted by our Courts of Law, so little is left of the principle on which this objection to competency rested, that, for my own part, I will confess I cannot see any adequate reason why all witnesses of good fame, that is, all not convicted of an infamous offence, should not be admitted, leaving the question of their credibility, and the weight of their testimony, to the consideration of the jury. In the case of "Bent *v.* Baker," an action against one underwriter of a policy, the Court held that another underwriter of the same policy was a competent witness for the defendant, because the verdict could not be evidence in an action against himself, although it was clear that the first action must, in fact, decide both claims. After that decision, it cannot be said that there is any rational ground for exclusion on account of interest in the event, any more than interest in the question. The rule thus established has ever since been followed; and now, in all cases, a person is competent, whatever bias he may have from interest, provided the verdict cannot be given for or against

him in another cause; the bias under which he swears being only a circumstance that goes to his credit. After this it is in vain to exclude any evidence upon the ground of interest in the event, and the principle should be extended to all interest direct or indirect. For let the House look at the inconsistency of the present system. If I have the most distant interest, even the interest of a shilling, in reversion on an estate of 50,000*l.* a year, I am incompetent to give evidence on any point affecting that estate; but suppose I have a father, ninety years of age, lunatic, bedridden, at the point of death, and quite incapable of doing any legal act whatever; that he is in possession of an estate in fee-simple; that I expect to be his heir; or that he had formerly made a valid will in my favour, so that nothing can prevent me from succeeding the moment he dies.—I may be a witness to give him the estate,—I am competent to swear into the possession of my father a property of 50,000*l.* a year, to which, in the common course of events, I must myself succeed in a few weeks. But pecuniary interest is not the only feeling that biasses the mind of a witness; and yet any one may swear for a parent, a brother, a sister, a child, on questions most nearly affecting the peace, and honour, and happiness of the whole family. I therefore think that a line ought to be drawn, not between one sort of interest and another, but between competency and credit; and that all should be admitted to give evidence, leaving it to the jury to determine what dependence may be placed upon their testimony. This is rendered the more fit by the nature of the shifts resorted to for the purpose of restoring the competency of interested witnesses; I allude, of course, to that notable expedient, a release of all actions or causes of action. When a witness has an interest, if he is deprived of it by a release, there is no objection to his competency. Evidence is thus often cooked up for the Court, nay, in the Court, while the witness is in the box, which, according to the existing rules, is not admissible, without such a process. Now, what is the real effect of the release on the mind of the witness? Just nothing—for if he be an honourable man he gives it up the moment he leaves the box, and while swearing he knows that he is to do so; so that the operation which has been performed upon him adds a pound to the year's revenue, nothing to the credit of his testimony.

2. With regard to Written evidence, I must say that it appears to be no less capriciously required than dispensed with. I think as highly as any lawyer ever did of the Statute of Frauds; I would go the full length of the Learned Judge who said that every line in it was worthy a subsidy; and it is, therefore, that I could wish a few lines might be added, so as to increase the number of subsidies at which I may value it. First, I would extend the number of cases in which written evidence is exacted. The French law requires that all contracts for sums above 150 francs should be reduced into writing, and even authenticated by notarial forms. I would adopt some such extension of our statute; and as almost all men are able to write at the present day, I do not think this would occasion any inconvenience. But then the outlets should be stopped up, by which the exigency of the statute is escaped. I think, as far as I can discern from reading the French Code Civile, and the Conferences upon it, (a wonderful monument of Napoleon's genius, as well as of the talents of his councillors,) that no part performance takes a case out of the French enactment. With us the things are so numerous which take transactions out of the Statute of Frauds, that the memorandum in writing is only in a small proportion of cases required. Hence, among other consequences, much subtlety of construction—often needlessly extended by jurisconsult exercitations, as the distinction between crops growing and severed, or a right and an easement, in determining what is an interest in land *. A judicious enactment, restoring the force of the Statute in these particulars, as well as extending it to other cases, would be highly beneficial in preventing fraud, perjury, and litigation; and could offer no impediment to commerce, further than the beneficial one of narrowing the credit given by small tradesmen.

3. The rule by which a man's Books are let in or excluded after his decease, is also, in my mind, extremely defective. They are evidence, if he has entered the receipt of sums by which he makes himself chargeable to any amount. If he only debits himself with the receipt of 5*l.*, which very likely he

* Thus a license for any number of years to stack coals on a close is not within the statute; such a complete occupation of every inch of the surface, and exclusive of all other use of it, even by way of easement, is not held to be an interest in land. There is a case to this effect in Sayer's Reports.

may have received, he makes his books evidence for his representatives, who may gain 500*l.* to which he never was entitled. The ground on which they ought to be excluded is, the general probability of their having been made for the purpose of creating evidence; but that probability is never weighed at *all* in the particular instance. We had much discussion of this matter in the case of Barker *v.* Wray, before Lord Eldon, who appeared exceedingly to question the soundness of the received rule; this at least was certainly the impression of the bar. Would it not be better to abolish the legal presumption, exceedingly ill-founded in fact, which lets in all such documents generally, and as generally excludes all others, and to substitute in its place the rule, that any deceased person's books or memorandums may be received, provided it appear that they were not prepared with a view of making evidence for his successors, but plainly *alio intuitu*? Observe, too, that in one case we admit, without any qualification, the books of a predecessor, in his successor's behalf. I mean entries made by a deceased rector or vicar of the receipt of tithes, which are always admitted as evidence for succeeding incumbents, because he is supposed to have had no interest in mis-stating the fact—as if the clergy were always entirely free from the influence of a corporation spirit.

4. Than the rules for the Examination of witnesses, I am of opinion that nothing can be better, generally speaking. Every facility is afforded to council for extracting the truth. Upon this important head, therefore, my remarks will be few. There is a want of uniformity in the practice of the judges towards council engaged in examination. Some will not allow them to cross-examine a witness whom they have called themselves, even though he is stated when produced to be a hostile one; and others will not allow them to put a leading question to an adversary's witness, in cross-examination, if he be really friendly to them. The sound rule seems to be that it depends on the connexions and demeanour of the witness whether he shall be regarded as the witness of the party producing him or no.—Again, certain tests are excluded, by which the capacity and the credit of a witness may best be tried. If I wish to put a witness's memory to the test, I am not allowed to examine him as to the contents of a letter or other paper which he has written. I must put the document into his hands before

I ask him any questions upon it, though by so doing he at once becomes acquainted with its contents, and so defeats the object of my inquiry. That question was raised and decided in the Queen's case, after solemn argument, and I humbly venture to think, upon a wrong ground, namely, that the writing is the best evidence and ought to be produced, though it is plain that the object here is by no means to prove its contents. Neither am I, in like manner, allowed to apply the test to his veracity: and yet how can a better means be found of sifting a person's credit, supposing his memory to be good, than examining him to the contents of a letter, written by him, and which he believes to be lost?

There is a test, excluded in cases of Libel, of which I shall say the less, that I brought in a Bill some years ago to remedy this defect. The main question in any prosecution for Libel being the innocence or guilt of the publication, is it not preposterous to keep the proof of its truth or falsehood from the view of the Court? Almost every thing else is admitted which can throw any light upon the motives of the party; but that is carefully shut out which is the best test by far of their nature, though certainly only an unilateral test, inasmuch as there must always be guilt, if there is falsehood, though truth does not of necessity prove innocence. Nay, the defendant cannot even be allowed to urge the truth in mitigation of punishment after conviction; as if there were the same criminality in publishing that a man had been tried and sentenced to the gallies for forgery, who was so sentenced, and that an innocent individual had been sent thither, who never had been tried or even suspected of the offence—a case which lately occurred within my own experience.

Another test, of a still more important kind, is excluded by a very injudicious refinement of our law, its repugnance to try Collateral Issues. A foul charge is brought against a man, of rape, or some yet more horrid offence, and the liberty of cross-examining the prosecutor or his witness, whom I may assume to be his fellow conspirator, is, in a most important particular, restrained. The defendant's council may address the witness thus—"Were you not examined on different occasions, at four or five several sessions, when you sought, by your testimony, to convict as many different individuals of an offence

similar to that which you now accuse this prisoner of committing; and were not all those persons whom you so prosecuted acquitted? Did not the Court reprimand you for prevarication, nay, order a bill for perjury to be preferred against you?" True, the council is at liberty to put questions like these; but what, if the witness answers, as in all probability he will, be the fact how it may—"No"? The prisoner cannot give evidence in contradiction of the wretch's assertion, at least the practice goes the full length of this. But at any rate it is quite clear law that, if the witness is asked, "Have you not yourself been guilty, repeatedly, of this very crime which you now wish to fasten on the prisoner?" and he should reply, as doubtless he will, "No,"—the prisoner is not allowed to adduce evidence of the fact, because, forsooth, the Court cannot try "collateral issues," unless the record of a conviction is produced. Nay, I have known judges, though on this they differ, who would not suffer the prosecutrix in a case of rape to be asked if she had not led an unchaste life before, because a common whore may be ravished,—as if the probability of the event were the same in all cases, and were nothing to the question under consideration.

5. Furthermore, I ask, why should any class of persons be excluded from giving evidence in criminal cases on account of their Religious opinions, notwithstanding their testimony is admissible in cases of a civil nature? A quaker is precluded by his religion from taking an oath; his affirmation is received in civil, but rejected in criminal cases. I was once employed, with two of my learned friends, to defend a man, prosecuted by the Attorney-General, for a misdemeanour. We had a very worthy and learned physician, by whose testimony we expected to rebut the charge; but it turned out, when he came to the witness-box, that he was a quaker; of course he would not swear, and equally of course he could not affirm. Our client, also of course, was convicted. This is bad every way; it is bad, for that it suffers guilt to escape; it is bad for that it suffers innocence to be destroyed. The quakers, it is true, desire not to see a change, because, being averse to capital punishments, they do not wish their testimony to be used in capital cases; but they forget that their evidence may be the only means of saving an innocent person from the very punishment of death to which they object, and

that, rather than help to hang the guilty, because they dislike the punishment, they are allowing the innocent to suffer by the self-same punishment. There is, in my opinion, no reason for excluding any individual, be he of what religion, sect, or persuasion he may, from giving testimony in cases of every kind, provided he believes in the existence of a God, and a state of future rewards and punishments; and is not openly infamous by sentence of a court.

6. I have already, in speaking of competence of evidence, said somewhat of Presumptions; but there is a class of presumptions which has found its way into the practice of all Courts, and ought, in my opinion, to be carefully excluded; I mean presumptions affecting the weight of evidence, tending to withdraw the attention of the Court from the facts of the particular case, and to produce a decision founded upon some kind of average taken from other cases, and because taken at a former period, of course excluding the case in hand. It has thus become almost a rule of law, that perjury can only be proved by two witnesses, or, perhaps, by one witness and the defendant's hand-writing. Why may not other circumstances exist, quite as sufficient to cast the balance against the oath of the accused, and give credit to his accuser? This presumption goes in favour of the defendant; but there is another, by which he is often, I am convinced, improperly convicted; I mean the rule that an accomplice is entitled to credit in all particulars, provided he be confirmed in some. I once, many years ago, endeavoured to contend for a limitation of this rule, when the late Chief Baron Thompson presided in the Special Commission at York. I maintained that it was necessary to give the confirmation upon some fact which could not be true consistently with the defendant's guiltlessness. It is certain, however, that the law knows no such qualification, and the Judge whom I have named, than whom no greater criminal lawyer, or more humane and upright man ever existed, ruled, with his reverend brethren, against me; and seventeen men suffered death, some of whom were convicted on the testimony of accomplices. I do not exactly recollect, whether the confirmation was as slight as would barely satisfy the exigency of the rule; but I am very sure, that instances frequently occur in which the story of an accomplice leads to conviction,

while all the witnesses of credit swear only to slight or wholly equivocal circumstances.

7. It is a somewhat similar anomaly in the rules of evidence, that the Court always takes upon itself to Construe Written instruments, of whatever kind, as if their sense must be matter of law, while the weight of all parol evidence is as invariably left to the Jury. Why should the assistance of the Jury be wholly rejected in this province? It is another and a kindred rule, that where, on the face of a writing, there is an apparent, or as the lawyers term it, a Patent Ambiguity, no other evidence can be allowed to explain it; where the Ambiguity is Latent, or raised by extrinsic evidence, there, other evidence may be adduced to remove it. This principle has been laid down by high legal authority—for it is first clearly stated by Lord Chancellor Bacon—but I am much disposed to question its correctness. Coupled with the other rule, which precludes the Jury from construing written evidence, it tends greatly to narrow and darken the path to correct decision.

This naturally leads us to examine a little how the Courts have exercised this, which they have thus claimed as their exclusive province; and we are thus conducted to a variety of other Presumptions respecting evidence, which have been received and acted upon, so as now to have become Rules of Interpretation, and parcel of the law of the land. With much unfeigned respect for the authority of the great names whose sanction this large branch of our jurisprudence has enjoyed, and with much admiration of the ingenuity and astuteness which it has called forth, I must be permitted to say, that, considering the paramount object of all law—its use as a rule of life for the people,—no part of our system is less entitled to praise.

It should seem that one obvious principle of construction would be to take words in their plain ordinary sense, and always to construe them alike, in whatever instrument they might be used. Only let lawyers consider what a mass of technical niceties and real difficulties this would get rid of; only let them reflect on the consequences that do result from following the very opposite course. Why should the same words be differently construed in a will and in a deed? Why do words, which in one species of instrument give an estate in fee, convey only a life-interest in the other? Why should the last words employed in a will

overrule the earlier ones, and not in a deed, on the vain refinement that those express a man's latest intention—as if the whole taken together were not his latter will, as much as the whole taken together are his deed? But even in wills, where we affect most to follow the intent, so nice is the construction, so technical has it become through many decisions of the courts, and so imperfect consequently is the knowledge generally possessed by people on the subject, that a man cannot well be more in the dark on the subject of the distribution of his property after his will has taken effect, by his being naturally dead, than he is at the very moment of making it. In fact, most men, while disposing, or fancying they dispose of their property, do not, in the least, know what they are doing. An unlearned individual thinks he is giving a life-estate when he is giving an estate in fee, or in tail, and *vice versâ*. The testator, J. Williams, whose will gave rise to the case of *Perrin* v. *Blake*, where the rule in Shelley's case was extended, little dreamt that the first taker was to have the absolute control over the property, when he directed him to take an estate for his life and no longer. Observe, I am far from complaining of that any more than of Shelley's case. The refinement which unites the particular estate with the remainder, in the issue of the first taker, is little more than an application of the simplest rule in law, that an estate to a man and his heirs (or, which is the same thing, to a man for life, with remainder to his heirs) is a fee simple. But the law should prevent the niceties, occasioned by following out its principles, from misleading those who are ignorant of those principles. By freeing it from such technicalities you would, I think, rather elevate the study of jurisprudence and raise its professors; I am certain you would benefit all the rest of the King's subjects.

It is hardly to be conceived how much, as matters at present stand, a man who makes his will is in the dark as to its final operation. Thus the creditor who appoints his debtor executor of his will, is considered as having granted a release of the debt: what ordinary person would think he had done so? The very same reasons that induced him to lend the money, and to count upon its faithful repayment, friendship, blood, confidence, naturally lead him to appoint the borrower his executor. I have known it happen in this way fifty times in the country; yet the

debt is gone at law; and equity will only relieve by holding the executor a trustee, where there are other debt sand no free fund to pay them, or some words showing an intention to revive the debt—words not very likely to be used by a person who never dreamt of its being extinguished. Then suppose a man has made two wills of the same date, and cancels one of them; it is held that, in certain circumstances, he cancels the other. If one of the wills is at his banker's, the law raises a strong presumption that by cancelling his own copy he intended to cancel that, when the probability is that he cancels because he is aware there is a duplicate, and does not wish to have the first lying about his house. When both copies are in his own possession, the law does not entertain so strong a suspicion of the intention to annul the will, by cancelling one; still, however, the presumption is raised. An individual may be thus held to have died intestate, who never entertained any intention of the kind; and his property may pass away from those near relatives or favoured friends to whom he destined it, and be given to his hundred-and-fiftieth cousin, or, for default of legitimate relatives, may be vested in the crown. But it is not in this way only that a person may revoke his will without knowing it, and die intestate while he thinks he is disposing of his property. He may happen to do so by the very act he performed with a view of confirming his testament and establishing his purpose. A recovery suffered, unless the will be republished, destroys it entirely, upon the nicety, quite consistent, I admit, with strict legal principle, that a new estate is taken back, different from that which was in the testator when he devised. This happens frequently to frustrate the plain intent of parties. Lately in the Court of King's Bench we had an instance of large property in this immediate neighbourhood, going any where rather than according to its owner's intention, because a recovery had been suffered; and a recovery, suffered for the express purpose of confirming the will, deprived Lord Erskine of a considerable estate in Derbyshire. So a conveyance, which divests an estate though but for an instant, to serve a use, with the intention of immediately taking back the former uses, which are accordingly taken back, totally revokes the will made before*. Nay, no

* Goodtitle *v.* Otway, 7 T. R. 399.

less a judge than Lord Hardwicke has expressly laid it down that where a man, supposing he had only an estate tail on which a devise could not operate, suffers a recovery for the express purpose of taking back a fee in order that his will may be good, it is thereby revoked*. The most notable part of these excessive refinements is, that they all proceed upon the act being evidence of a presumed intention, when no man can doubt that either there was no such intention, or one of the very opposite description. Thus if I devise lands to a person, and afterwards, for the same reason of favour towards him, by way of making him more secure, give him a lease in the same, to commence after my death, he being perhaps tenant for years under me at the time, the will is gone.† It thus happens that, in the very act of his life, in which it is most important that a man should see clearly what he is about, and most likely that he should have no professional assistance, he is often wholly in the dark as to the effect of what he is doing.

Were I in want of further illustration for this matter, I might go at once to the doctrine of Powers, and show how the thing intended to be permitted is often prevented, and *vice versâ*, by the view which courts have taken of what is and what is not a good execution, and which renders it unsafe to give an opinion upon any Power, the very words of which have not received a judicial construction. I might go to the still greater niceties in the rules respecting the construction of contingent and executory Uses, a chapter of our law, signalized by the utmost learning and ingenuity of those who have treated it. I might, indeed, at once ask what foundation in reason, or even in analogy, there is for holding that a purpose should be accomplished, by way of executory devise, which cannot be effected by way of contingent remainder; as the mounting a fee upon a fee, or directing a contingent use to spring and enure without any particular estate to support it; if, indeed, I ought not rather to ask why there should be any necessity in

* Sparrow *v.* Hardcastle, ib. in *note*. Nor is it necessary to change the estate, in order to operate a revocation, *e. g.* a feoffment by tenant in fee to another to his use and that of his heirs, 3 Ves. 6, and an ineffectual recovery by tenant for life, (reversion in fee, disposed of by will) 2 Ves. jun. 430.

† Cro. Jac. 40, 5 Ves. jun. 650.

either case for a freehold interest to support an after-taken contingent estate, and why there should be any horror of mounting a fee upon a fee, an idea so familiar to the feodists in the sister kingdom, that their strict settlements (always made by deed, for they, having their niceties like ourselves, though of another sort, allow no devise of real property at all) consist of a succession of fees, under restraints specifically prescribed as to alienation and incumbrances. But I will satisfy myself with what has been said on this head, and suggest, as the obvious corollary, for remedy of the great bulk of the mischief I complain of, the laying down by the Legislature of certain Formulas, couched in plain language, and of an import recognised by written law. You give this help to Justices, to prevent convictions and orders being set aside for technical error. Why not give it to men often less-learned than they, for disposing of their property necessarily without professional assistance? Why not say, that whoever would give a fee, should use these words; — an estate for life these;—that whoever would clothe the takers of that estate with certain powers, may do it thus—and so forth—not stating that such are the only words which shall effect the same purpose, but that, at any rate, those shall.

By such a plan, and by retrenching some refinements which the fund is ample enough to spare, in rules of construction, I know that much curious learning will be brushed away; but I also know that the law will be rendered accessible to those whose rights it is to govern, and that the lay people will gain far more than the learned lose. Thus much for amending the rules of construction. But for the general establishment of sound rules of evidence, I should recommend, first of all, an introduction of one rule as to the manner of examining witnesses, instead of trying issues of fact in one court by written depositions and in another by *vivâ voce* examination, (whereby the same Will may be, and sometimes has been, supported in Doctors Commons, upon personalty, which a Court of Nisi Prius afterwards set aside altogether,)— in one court by affidavit, by sworn answers to unsworn bills, by yet more clumsy and ineffectual examination, on written interrogatories previously drawn; in another only by parole examination. I would have all matter o fact, wheresoever disputed, tried

by a jury. For sifting the truth by such a trial, I would admit all records between the parties or their privies, and all instruments and writings of every kind of the parties against whom they are used; so much the law now permits; but I would let in whatever documents, written by persons deceased, appear plainly to have been made without any view to manufacturing evidence. In a word, excluding inferior evidence where better can be obtained, and, therefore, all hearsay absolutely, I would admit whatever could not be deemed to have been done with a view to the fabrication of proof, by the knowledge that such would be receivable. Allowing objections from interest in the event as well as from interest in the question, to weigh only in estimating a witness's credit, I would make no man incompetent to give evidence in any cause, civil or criminal, who was not either an unbeliever in God and a future state, or convicted of some infamous offence. In examining the witnesses, I would suffer a person to be contradicted as to matters directly affecting his credit, and on which he had been questioned*; and in the event of a witness turning out hostile to the party calling him, there can be no sound reason why, subject to the Judge's discretion, he should not be treated as adverse, and even contradicted, without which the latitude at present given by some Judges, only amounts to a power of putting leading questions. Of nonsuits for variance, and other technical defects, I have already spoken.

The law respecting Limitations comes as an appendix to the chapter of Evidence. No branch of our jurisprudence is more imperfect, and hardly any more demands revision. Why should there be no statutory limitation of a bond or other specialty? For want of it, the Courts have adopted a sort of rule, founded upon presumption of payment, that where the instrument is twenty, or even eighteen years old, sometimes less, (so accurate is the rule,) and no interest has been paid, or other acknowledgment made of the subsistence of the debt, it may be assumed to be satisfied; that the instrument is cancelled they cannot presume, for there it is, seal and all, staring them in the face; but there being no receipt or discharge, and the bond being

* This is really only a nominal relaxation of the rule in *Spencely* v. *de Willet*; the spirit of that rule is preserved, for the credit of the witness is not a collateral issue. 7 East, 108.

in the obligee's hand, is surely quite enough to rebut any presumption of payment—so that the courts have really made a law, though a bad and uncertain one, to meet the case. It would be far better to fix at once a period of ten years, after which no action should be maintainable upon specialties.

But even in cases where we have a statute of limitation, there is hardly any vestige left of the relief which it was intended to afford, owing to the labours of the Courts in finding means of evading its beneficial operation. It was plainly meant as an act of peace and quiet. My Noble Friend (Lord Plunkett) who presides in the Court of Common Pleas of the sister kingdom, once said, with his usual felicity of expression, that Time is armed with his scythe to destroy the evidence on which titles rest, but the lawgiver makes him move with healing on his wings to stay the ravages of his weapon. To thwart the design of the Legislature the Courts have been setting up their rules of presumption. At one time they seemed really to hold that any thing, even the simplest expression, would take a debt out of the statute of limitations; for instance, if a defendant had said—"I have paid the debt," he was taken as admitting it, unless he could prove payment. Again, if he said—"I owe you nothing," the assertion was taken as an acknowledgment; and he was also required to prove an acquittance of the plaintiff's claim. The reply—"Six years have expired" was equally dangerous, though it was only saying out of court what the statute itself allowed him to say in pleading. In fact, so deeply did Lord Erskine feel the difficulties which encompassed the defendant under these efforts of judicial acuteness, that he said the only safe course a defendant could take when his adversary sent a fishing witness was to knock him down, for though he might be proceeded against for the assault, he retained the benefit of the statute, as regarded the debt. Although of late the current of decisions (as it is pleasantly termed) has set in more in an opposite direction, there is still abundant room for a provision to give this wholesome law effect. The means are obvious; let nothing but an acknowledgment in writing take any debt out of the statute. In a word, prop the main pillar of security against stale and unjust demands, the Statute of Limitations, by a beam from that other bulwark against perjury, the Statute of Frauds.

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The law of Limitation seems to require alteration, not additional enforcement, in the case of Real Actions. The period for a Writ of Right is thirty or sixty years, according as the demandant counts on his own or his ancestor's seisin. But in a Formedon, which is often termed, as in truth it is, the tenant in tail's writ of right, it is no more than twenty years. The difference surely is founded on no sound reason, and ought to be done away, by a law fixing thirty years as the period of limitation in all real actions, and removing the important difference in construction which Sir T. Plomer's late decision has raised from the different expressions used in the statute of Henry VIII. and James I., so as, in many cases of property under lease, to deprive the demandant of his remedy altogether.

But in one case there is no limitation at all, I mean that of Church rights. Why should there not be? I admit that the same period ought not to be adopted respecting the Church as the *nullum tempus* act prescribes for the Crown; but I confess I do not see the necessity of leaving the law as it now stands, and exempting ecclesiastical claims from all restriction whatever. What is the consequence? It was admirably pointed out by a most learned Judge (Mr. Baron Wood), in one of the ablest tracts ever written, no less distinguished by closeness of legal argument than by that pure and concise diction peculiar to him. A composition real may have been made between a clergyman and his parishioners, at any time since the restraining statute of Elizabeth; for 200 years the land may have been possessed by the parson, and yet if the original agreement should have been lost, as it is almost sure to be amongst farmers, though no tithe has been taken during all that time, there would be no bar by limitation in the event of the clergyman claiming the tithes; so that it could not be ascertained by whom the land had been given, and the land could not be restored for want of claimants; indeed there are cases in which the clergyman has thus retained the land originally given for the composition, and has his tithes paid to boot. I would say, then, with Mr. Burke, take not away from the Church its power of being useful, but deprive her only of that which makes her odious. The reign of Richard I. is the period up to which all rights as against churchmen must be carried; nay even as against lay impropriators, to whose case none of the reasons for favour

ing ecclesiastical claims apply. Yet that period becomes daily more remote and more inapproachable by evidence. Does not every principle of justice require, that lay titles to tithe should be put on the footing of other property; and that for Church rights, properly so called, a period of limitation should be affixed, longer than for other rights, to prevent collusion between incumbents and tithe payers, and combined, if necessary, with the number of two or three vacancies?

vi. The course of my observations has now brought me to the Trial of the Issues, raised by the Pleadings, on the Process, and investigated by means of the Evidence. On this branch of the subject I have little to offer. The principles are plain which should guide us, and they are not so widely departed from in practice as to require any great change. Each party should be allowed fully to propound his case in the way most advantageous to himself. All new matter advanced by the one should receive an answer from the other; each should be encouraged and not hindered to bring forward whatever evidence may tend to throw light upon the matter in question. Our practice, at least in modern times, departs a good deal from these principles, but is very easily restored to them. We compel the plaintiff to explain his case, and comment upon it before his witnesses are examined: unless his adversary produces evidence, he has no means of observing, even upon his own case, after he has proved, or attempted to prove it. Hence his opening must be often very general, for fear of his evidence falling short; and hence he often labours under a prejudice from that cautious and imperfect opening, which a little explanation might remove. Council are every day obliged to state their cases in the dark; experience teaches us in some degree the difference between what is set down and what will be actually sworn; so that a young advocate will give a very different statement on the same brief from a practised one,—no great compliment to our method of trying causes, in which as little as possible should depend on the forensic skill of practitioners; but even the most experienced are constantly deceived by their instructions; the cause may change its aspect, especially in the cross-examination of the witnesses; and they have no opportunity of correcting the error and preventing the result from turning on a matter wholly foreign to its merits,—the discretion of

those who prepared the brief—unless the other party gives evidence. Now, for this very reason, and to gain by his adversary's failure, (a failure not necessarily connected with merits,) he will avoid doing so; he will also avoid it generally, to prevent his own remarks from being answered. Hence much important evidence is every day shut out, by this play of council to avoid giving a reply, which the plaintiff should have, whether the defendant calls witnesses or no. Here, as in other things, the system is far from uniform: in Appeal cases, both before the House of Lords and the Privy Council, there is a reply, as of course; and in the Committees of this House, as well as in trials for High Treason, there is an opportunity given to each party of commenting on his case, after it has been presented in evidence, by a summing up. The practice is the same in the Ecclesiastical Courts, and the Delegates. I understand that a summing up, or speaking to evidence, as they call it, is allowed in Ireland; in Scotland both prosecutor and prisoner are heard on the evidence after it has been adduced; the want of an explanatory opening being in part supplied by the debate upon the relevancy of the indictment. I believe in civil cases they have adopted our modern practice, instead of the older method to which the Irish adhere.

Before leaving this head, I may be allowed to suggest an amendment of a minor kind, but of very considerable importance. It would be advantageous to have a Sworn Short-hand Writer in every Nisi Prius case. Those who attend our Courts of Nisi Prius are aware how sorely the Judge is hampered, and his attention diverted from more important considerations, by being obliged to take such full notes of the evidence. This practice is necessary, because the only record of the facts of the case is to be found in his notes. Now, the Judge is often a slow writer, and, in this respect, men differ so much, that one judge will try three or four causes while another will dispose of only one, and one will impede a cross-examination so as to render it quite ineffectual, while another will never interrupt it at all. It happens likewise that a judge may be an incorrect taker of notes, which not unfrequently leads him to an incorrect decision, at least to an incorrect report of the case, when a new trial is moved for. No judges ever write short hand, and for no other reason, than that their notes may have to be

read by another, if the record comes not out of their own court. My Honourable Friend, the member for Durham, (Mr. Michael Angelo Taylor,) whose suggestions have ever been found most beneficial to judicial proceedings, introduced the great improvement of short-hand writers in our committees, and abridged the delay and expense of those inquiries incalculably. I would have them, if introduced into our courts, take full notes of the proceedings; at the same time I would not hold their notes as conclusive; they might be subject to the correction of the judge on any important matter misapprehended; for he, of course, would take his own note, but only of the principal and the more delicate things, likely to be misunderstood by one ignorant of law. He would soon find where he could trust the short-hand writer and where not; he would be relieved from much labour merely mechanical, and left free to regard all the bearings of the case, and to take a commanding view of it, so as to bring on a more speedy decision of its merits.

But, Sir, I cannot leave the subject of trial without saying somewhat of the general principles regulating Real Actions, sinning as they do against all sense and justice. In other cases the plaintiff begins the attack, and on him it rests to prove his case, to stand or fall by his proof; but, in a Writ of Right, the person in possession fifty-nine years and three-quarters must, according to the existing law, expose his title, pedigree and all, to his opponent, who can lie by and pick holes to his own advantage, without being even asked on what ground he relies, until his adversary has proved his case;—a great benefit, whatever be his ground; for the Jury must give the property to somebody, and it is likely that the party in possession having failed, the claimant may get in. In Ejectment, though the plaintiff may have held possession for almost twenty years previous to the cause of action arising, yet, if he has been out of possession for one single day, it is incumbent on him to prove his title, and the defendant is not bound to budge if he fail. In this case, too, the plaintiff must pay costs if defeated, even though the person he attacks has been but a day in possession, and cannot have been in above twenty years. In the real action where the possession may have been near sixty years, the claimant pays not one shilling of costs, for making you prove your title, though he fail entirely in impeaching it.

Nor let it be imagined that these evils never occur; I have seen them fully exemplified twice within the last eighteen months. We had a writ of right at York in the spring of 1826, to try the title to many thousands a year. On the eve of the trial we, for the demandant, discovered a defect in the proof of taking the esplees, and were forced to withdraw the record. It came down for trial at the next assizes, when we were astonished to find the defect we had reckoned upon in the tenant's title removed, and on asking where the document produced had been discovered, we were told that it had come to light on searching the Bishop's chancery, at Salisbury, some weeks after the spring assizes, in which he would have been defeated had we gone to trial. Only see by what an accident the possession of this large estate was saved! Our client was defeated on the freehold as not being the eldest son; he afterwards brought a plaint, in the nature of a real action, in the Court of Lambeth, as youngest son, for the copyhold, which was descendible by Borough English. He again failed; but, of course, he paid costs in neither suit.

vii. The Trial being had and the Judgment pronounced, there follows the Execution; and in this most important branch of the law, which may be emphatically called the law of Debtor and Creditor, I feel perfectly justified in declaring our system to be the very worst in Europe, departing the most widely from the principles which ought to regulate a creditor's recourse against his debtor. Those principles are abundantly plain. In proportion as, before the debt has been proved, the person and property of the party charged should be free from all process not necessary to prevent evasion; so, after judgment, ought the utmost latitude be given to obtain satisfaction from all the defendant's property whatever—land, goods, money, and debts—for to himself they no longer belong. To allow any distinction between one kind of property and another seems the height of injustice. No consistent reasoner can maintain the propriety of exempting land more than chattels; no honest debtor can claim the privilege which he waived when he contracted the debt. In the case of a person deceased, all kinds of debts and all creditors should come in equally upon an insolvent estate; and preference only be given to a mortgage or other lien. The chattel itself sued for should be returned, and da-

mages only given where it has been lost. The person of the debtor should not be taken in execution unless there is either a wilful concealment of property, or there has been criminal or grossly imprudent conduct in contracting the debt; for the two objects should be kept carefully distinct, of what is done to satisfy the creditor, and what is done to punish the debtor. Lastly, the former should obtain his satisfaction as speedily as may be, and as conveniently for the latter as is consistent with the creditor's security. How widely does our law depart from these obvious and natural principles, by dint of refinements, blunders, and openly-avowed injustice!

First of all, there are only two actions for recovery of chattels, in which we are expected to give the thing specifically sued for, Replevin and Detinue; yet in neither can the party compel a delivery in kind; and detinue is besides useless, because the defendant may wage his law. In all others the claim is avowedly for damages only. A horse is taken from me, and I sue for it; yet I only obtain damages for its detention: but suppose I want the horse and not the money, the law will not aid me; nay, it will give me not a farthing in consideration of being thus compelled to part with it; I only receive what it would fetch in the market if I chose to sell it. Equity and common law differ widely here; the former always performs in specie; the latter looks to damages only; unless, indeed, where it is inconsistent with itself, as in the summary process to make parties perform awards, and attornies and other officers of the courts deliver up deeds, and pay monies, by means of attachment. But all these defects are comparatively trifling, and rather absurd in principle, than of extensive injury in practice. What is quite substantial, and of hourly occurrence, is the frustration of a creditor after he has obtained judgment, and taken out execution. His debtor has a landed estate; if it be copyhold, the creditor cannot touch it in any way whatever; if it be freehold, he may take half by elegit, and receive the rents and profits, but no more, in the lifetime of his debtor. The debt for which he has received judgment may be such that the rent of the land will not even keep down the interest; still he can take nothing more; he cannot turn the land into money;—so that, when a man sues for a thing detained unlawfully, you give him money which he does not ask; and when he asks for money by suing for a

debt, you give him land which he does not want. But if his debtor dies before judgment can be obtained, unless the debt is on bond, he has no remedy at all against any kind of real property of any tenure; nay, though his money, borrowed on note or bill, has been laid out in buying land, the debtor's heir takes that land wholly discharged of the debt.

But not only is land thus sacred from all effectual process of creditors, unless the debtor be a trader; the great bulk of most men's personal property is equally beyond reach of the law. Stock in the public funds—debts due in any manner of way—nay, bank notes, and even money—are alike protected. I may owe a hundred thousand pounds in any way, and judgment may have passed against me over and over again; if I have privilege of Parliament, live in a furnished house or hotel, and use hired carriages and horses, I may have an income from stock or money lent, of twenty thousand a-year, and defy the utmost efforts of the law; or if I have not privilege, I may live abroad, or within the rules, (as some actually do,) and laugh at all the courts and all the creditors in the country. So absurd are our rules in this respect, that if I have borrowed a thousand pounds, and the creditor has obtained judgment, the Sheriff's officer appointed to levy upon my personalty may come into my room and take a table or a desk; but if he sees the identical thousand pounds lying there, he must leave it—he touches it at his peril! —"For this quaint reason," says Lord Mansfield, "because money cannot be sold, and you are required by the writ to take your debt out of the produce of goods sold." It is true, that great judge, whose merits as a lawyer were never underrated, except by persons jealous of his superior fame, or ignorant of the law, (among whom was a writer much admired in his day, but of very questionable purity, and certainly no lawyer,) leaned to a contrary construction of the creditor's powers, and might have somewhat irregularly introduced it. But Lord Ellenborough afterwards denounced such attempts as perilous innovations on the fundamental principles of our jurisprudence,* and the law is now settled on this point.

And here, Sir, let me step aside to ask who is the innovator,

* Knight v. Criddle, 9 East, 48.

—he who would adhere to such rules in violation of the manifest intent and spirit of our old law, or he who would re-adjust them so as to give it effect? In ancient times there were none of those masses of property in existence, which are exempt from legal process. When the law, therefore, said "Let all a man's goods and chattels be answerable for his debts," it meant to include his whole personalty at the least. Things have now changed in the progress of society; trade has grown up; credit has followed in its train; money, formerly only used as counters has become abundant; banker's accounts have been invented; paper currency and the funds have been created. Three-fourths of the debtor's personalty, perhaps nine-tenths, now consist of stock, money, and credit; and the rule of law which leaves those out of all execution, no longer can mean as before—"Let *all* his personalty be liable"—but "Let a tenth-part of it only be taken." Can there be a greater change made upon, or greater violence done to, the old law itself, than you thus do by affecting to preserve its letter? The great stream of time is perpetually flowing on; all things around us are in ceaseless motion; and we vainly imagine to preserve our relative position among them, by getting out of the current and standing stock still on the margin. The stately vessel we belong to glides down; our bark is attached to it; we might "pursue the triumph, and partake the gale;" but, worse than the fool who stares expecting the current to flow down and run out, we exclaim—Stop the boat!—and would tear it away to strand it, for the sake of preserving its connexion with the vessel. All the changes that are hourly and gently going on in spite of us, and all those which we ought to make, that violent severances of settled relations may not be effected, far from exciting murmurs of discontent, ought to be gladly hailed as dispensations of a bountiful Providence, instead of filling us with a thoughtless and preposterous alarm.

But the imperfect recourse against the debtor's estate, although the grand opprobrium of our law, is by no means its only vice; the unequal distribution, in case of Insolvency, is scarcely a less notable defect. Only traders, or those who voluntarily take the benefit of the act, are compelled, when insolvent, to make an impartial division of their property. All others may easily, and with impunity, pay one creditor twenty shillings in the pound, and the others six-

pence or nothing. So, when a man dies insolvent, his representatives may, by acknowledging judgments, secure one creditor his full payment at the expense of all the rest. Then, lax and impotent as the law is against property, wide as are its loop-holes for fraud and extravagance to escape by, utterly powerless as is its grasp to seize the great bulk of the debtor's possessions, against his useless person it is equally powerful and unrelenting. The argument used is, that the concealed property may thus be wrung from him: the principle, however, of the law, and on which all its provisions are built, is, that the seizure of the body works a satisfaction of the claim; and this satisfaction is given alike in all cases—alike where there is innocent misfortune, culpable extravagance, and guilty embezzlement. Surely, for all these evils the remedy is easy; it flows at once from the principles I set out with stating under this head. Let the whole of every man's property, real and personal—his real, of what kind soever, copyhold, leasehold, freehold; his personal, of whatever nature, debts, money, stock, chattels—be taken for the payment of all his debts equally, and in case of insolvency, let all be distributed rateably; let all he possesses be sifted, bolted from him unsparingly, until all his creditors are satisfied by payment or composition; but let his person only be taken when he conceals his goods, or has merited punishment by extravagance or fraud. This line of distinction is already recognised by the practice of the Insolvent Courts; but the privilege of the Rules is inconsistent with every principle, and ought at once to be abrogated as soon as arrest on mesne process is abolished*.

viii. The last subject which presents itself to our notice is the Appeal from judgments recovered. Here, as in every other branch of our jurisprudence, the Courts of Law and of Equity proceed on opposite principles, though dealing with the same matter. In the former, you can only appeal on matter of law appearing upon the face of the record, or added to

* This arrest, the end of which, it is to be hoped, fast approaches, was not generally given by the common law. The *capias ad respondendum* is given in Debt and Detinue by West. 2 (13 Ed. 1.) cap. 11, in Case only so late as 19 H. 7. c. 9.

it by bill of exceptions, and never in any case before final judgment. In the latter, you can appeal from any interlocutory order as well as from the final decree, and upon all matter of fact as well as of law. So it is in the Ecclesiastical Courts, where a Grievance (or complaint upon interlocutory matter) is as much the subject of appellate jurisdiction as the appeal from the final sentence; and the Court above sits on all the facts as well as on the law. But the Courts of Common Law are as much at variance with themselves; for it depends on the Court you sue in, and the process you sue by (Bill or Original) how many stages of review you have.

The principal evil of Courts of Error, is the stay of execution which they effect, thereby giving the losing party in possession an interest in prosecuting groundless appeals. The Bill of the Right Hon. Gent. (Mr. Peel) being a partial measure, while it intended to remedy this evil, has rather increased it; because another more costly mode of obtaining the same delay being left open, the parties by defending actions in themselves without defence, avail themselves of it, to the enormous multiplication of frivolous trials. The true remedy I take to be this. Let the party who obtains a judgment be so far presumed right as to get instant possession or execution, upon giving ample security for restitution should the sentence be reversed. This is the rule in the Cape and other of our Colonies; in the Cape, two sureties, each in double the amount, are required. It would also be an excellent modification of this principle, to vest in judges the discretion of ordering the execution to be levied by instalments, upon reasonable security being given. Hurried seizures, and sales for next to nothing, would thus be avoided; as would the destruction of many valuable concerns, to the ruin of the debtor and the loss of the creditor also. The reasonable delay thus safely granted would further tend to prevent groundless appeals and frivolous defences, for mere dilatory purposes. The details of this measure would be easily arranged; I am sure that it well merits inquiry, if I shall obtain a Commission.

I have now followed the proceedings in our Courts through their whole course; and it will be observed, that I have said little or nothing of Costs—an important subject; perhaps, taken in all its bearings, the most important of any;

but which has so far been disposed of, in its principal relation, by the discussion of whatever tends to shorten litigation. A great, perhaps the greatest, evil of our system, as at present constituted, is the excess of the costs which a party succeeding is obliged to pay, over and above what he can recover from his antagonist. This is so certain and so considerable, that a man shall in vain expect me to recommend him either to bring forward a rightful claim, or to resist an unjust demand for any such sum as twenty, or even thirty pounds—at least, upon a calculation of his interest, I should presently declare to him, he had much better say nothing in the one case, and pay the money a second time in the other, even if he had a stamped receipt in his pocket, provided his adversary were a rich and oppressive man, resolved to take all the advantages the law gives him. I have here before me some samples of taxed bills of costs, taken quite at random, and far from being peculiar cases in any one respect. There is one of 428*l.*, made out by a very respectable attorney, and from which the Master deducted 202*l.*; of this sum, 147*l.* were taken off, which had been paid for bringing witnesses. In this other, amounting to 217*l.*, 76*l.* were taxed off; and in a third of 63*l.*, there were nearly 15*l.* disallowed; it was an undefended cause, to recover 50*l.*: had the defendant been obstinate and oppressively inclined, he would have made the extra costs a good deal more than the whole debt, although the suit was in the Exchequer, where the taxation is known to be more liberal. We had lately, in the King's Bench, a bill of above 100*l.*, to recover 19*l.*, and, probably, of that 100*l.* not above 60*l.* would be allowed. As things now stand, a part of this master evil is inevitable; for if practitioners were sure of receiving all their bills, they would run up a heavy charge wherever they knew the case to be a clear one. But as the fundamental principle for which I contend is, to alter no part of the law by itself, or without considering all the other parts, there can be no difficulty, consistently with this doctrine, to enlarge the allowance of costs as soon as other amendments have prevented the abuse of litigation by professional men.

Some erroneous rules of taxation may, even in a partial or insulated reform, be altered. Whatever is fairly allowed as between attorney and client, should be allowed between party

and party, except only such needless charges as have been ordered expressly by the client himself. There can surely be no reason for disallowing, as a general rule, all consultations, often absolutely necessary for the conduct of a cause, generally more beneficial than much that is allowed; nor can it be right, that so little of the expense of bringing evidence should be given, and that the cost of preparing the case by inquiries, journies, &c., should be refused altogether. The necessary consequence of not suffering an attorney to charge what he ought to receive for certain things, is that he is driven to do a number of needless things, which he knows are always allowed as a matter of course, and the expense is thus increased to the client far beyond the mere gain which the attorney derives from it. I have a great doubt whether benefit would not result from leaving the costs more in the discretion of the court which tries a cause than they now are: in equity, they are always so in the fullest extent; at law, almost all is fixed by statute.

Sir, in casting an eye over the wide field which we have been surveying, I trust the House will perceive that, although I have, for the most part, arranged my observations under the different stages through which causes are carried in our superior courts, I have yet been enabled to discuss the greater and by much the more important parts of our municipal jurisprudence. Indeed, with the exception of Commercial law, I am not aware of having left any branch untouched, that seemed to require amendment. I stated, in the outset, the reason why that formed no immediate part of my plan. A great portion of it is common to all trading countries, the Law-merchant, and is extremely well adapted to its purpose, being of comparatively modern growth, and framed according to the exigencies of commerce. Some other parts, however, are exceedingly defective. It would be difficult to point out greater uncertainty or more caprice in any branch of the system than are to be found in the law of Partnership. A man can hardly tell whether he is a partner or not: being a partner, the extent of his liability is scarcely less difficult to ascertain; and he will often find it in vain to consult his lawyer on these important matters*.

* The execution of judgments on partnership property is a remarkable example. The Sheriff must sell an undivided share, say a moiety of the

The distribution of estates under the Bankrupt law is likewise capable of very great improvement. After all that was lately done in arranging and simplifying this code, it remains full of contradictions, and the source of innumerable frauds and endless litigation. But into these things I abstain from entering. I must, however, once more press upon the attention of the House, the necessity of taking a general view of the whole system in whatever inquiries may be instituted. Partial legislation on such a subject is pregnant with mischief. Timid men, but still more blind than they are timid, recommend taking a single branch at a time, and imagine that they are consulting the safety of the mass. It is the very reverse of safe. In the body of the law all the members are closely connected; you cannot touch one without affecting the rest; and if your eye is confined to the one you deal with, you cannot tell what others may be injured, and how. Even a manifest imperfection may not be removed without great risk, when it is not in some wholly insulated part; for it oftentimes happens that, by long use, a defect has given rise to some new arrangement extending far beyond itself, and not to be disturbed with impunity. The topical reformer, who confines his care to one flaw, may thus do as much injury as a surgeon who should set himself about violently reducing a luxation of long standing, where nature had partially remedied the evil by forming a false joint, or should cut away some visceral excrescence in which a new system of circulation and other action was going on. Depend upon it, the general reformation of such a mechanism as our law is not only the most effectual, but the only safe course. This, in truth, alone deserves the name of either a rational or a temperate reform.

Then, what ground can there be for taking alarm at the course I recommend of amendment, and proceeding by careful, but general inquiry? It is, indeed, nothing new, even

whole; and the purchaser becomes tenant in common with the solvent partner, who may find the East India Company or Government his co-tenant, and be still liable to account to the other partner for his share of the profits; because the very effect of the execution which has let in so disagreeable a co-tenant of the stock will naturally be, to save the necessity of going to prison, (the only involuntary act of bankruptcy,) and thus prevent a dissolution of the partnership.

of late years, in this country. We appointed a Commission to investigate the whole administration of justice in Scotland; and it ended in altering the constitution of the Courts, and introducing a new mode of trying causes. Yet Scotland, to say nothing of the treaty of Union, so often set up as a bulwark against all change, might urge some very powerful reasons for upholding her ancient system, which we in England should vainly seek to parallel. She might hold up her statute book in three small pocket volumes, the whole fruit of as many centuries of legislation, while your table bends beneath the laws of a single reign—and of your whole jurisprudence, it may be said as of the Roman before Justinian, that it would overload many camels. But I do not merely cite, against alarms or scruples, that bold and wise and safe measure of Lord Grenville; older authorities, and in the Courts of Westminster, are with me. I will rely on Lord Hale, whose celebrated Treatise *Of the Amendment of the Law*, (far less studied, I fear, by our jurisconsults, than that of Fortescue *) well exposes the folly of such fears, with their origin. "By long use and custom (says he) men especially that are aged, and have been long educated to the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable. They tenaciously and rigorously maintain these very forms and proceedings and practices, which, though possibly at first they were seasonable and useful, yet by the very change of matters they become not only useless and impertinent, but burthensome and inconvenient, and prejudicial to the common justice and the common good of mankind; not considering the forms and prescripts of laws were not introduced for their own sakes, but for the use of public justice; and therefore, when they become insipid, useless, impertinent, and possibly derogatory to the end, they may and must be removed." Such is the language of Sir M. Hale. After Lord Coke and Littleton himself, there is no higher authority in the law than Shepherd, the author of the *Touchstone*, who, in another of his works, called "England's Balm, or Proposals by way of Grievance and Remedy, &c., towards the

* De Laudibus Legum Angliæ.

Regulation of the Law and better Administration of Justice," reminds his legal brethren, that "taking away the abuse of the law will establish the use of the law—*stabilit usum qui tollit abusum*—and that rooting up the tares will not destroy the wheat*." If the House require further authorities upon this point, I can refer them to one of the ablest and most instructive books published of late years, that of Mr. Parkes, a respectable Solicitor in Warwickshire, who, in giving the history of the Court of Chancery, has collected most of the authorities upon the subject of Legal Reform.

But our predecessors, members of this House in the 17th century, an age fruitful of great improvements, most of which were retained in more quiet times, undertook the amendment of the Law systematically, and with a spirit and a wisdom every way worthy of so great a work. In 1654, a Commission was formed partly of the House, partly of learned strangers. At the head of the former, I find my Honourable Friend the Solicitor General's less learned and more martial predecessor, called in the Journals, "Lord "General Cromwell." But in front of the latter stands "Mr. "Matthew Hale," afterwards the great Chief Justice, whose name is ever cited amongst the most venerable supporters of our Civil and our Religious Establishments. With them were joined all the great Jurisconsults and Statesmen of that illustrious age. They sat for five years, and proposed a number of the most important and general reforms. I will read the titles of a few Acts, the draughts of which the Commissioners prepared.

1. For taking away Fines upon Bills, Declarations, and Original Writs.

2. For taking away Common Recoveries, and the unnecessary Charges of Fines, and to pass and charge Lands entailed as Lands in Fee-simple.

3. For ascertaining of Arbitrary Fines upon Descent and Alienation of Copyholds of Inheritance.

* There is certainly a notion of Mr. Justice Doddridge being the author of this excellent book, or at least standing in the same relation to it that C. B. Gilbert does to Bacon's Ab.; for the dates of some works cited in it make it impossible he should have written it all.

4. For the more speedy recovery of Rents.
5. For the better regulating of Pleaders and their Fees.
6. For the more speedy and easy recovery of Debts and Damages not exceeding the sum of Four Pounds.
7. For the further declaration and prevention of Fraudulent Contracts and Conveyances.
8. Against the Sale of Offices.
9. For the recovery of Debts owing by Corporations.
10. To make Debts assignable.
11. To prevent solicitation of Judges, Bribery, Extortion, Charge of Motions, and for restriction of Pleaders.
12. An Act for all County Registers, Will, and Administrators; and for preventing Inconvenience, Delay, Charge, and Irregularity, in Chancery and Common Law (as well in common pleas as criminal Causes).
13. Acts for settling County Judicatures, Guardians of Orphans, Courts of Appeal, County Treasurers, and Workhouses, with Tables of Fees and Short Forms of Declaration.
14. An Act to allow Witnesses to be sworn for prisoners.

The House is aware that till much later in our history, by the great wisdom, justice, and humanity of our ancestors, it was provided that the witnesses for a defendant should not deliver their testimony upon oath; until the time of Queen Anne, the prosecutor only was allowed to prove his case, by sworn evidence; and the communication of the same right to the defendant, may be looked upon by some as a rude invasion of the ancient system, and a cruel departure from the perfections of the olden time.

This is not the only measure prepared by that celebrated Commission which has been since adopted, as the House will see by the enumeration I have given*. But steps were taken immediately after the restoration, for prosecuting its plans more systematically. A Committee was appointed by this House to examine the state of the Law and its practice;

* Sir S. Romilly's valuable MSS. contain the exposition and discussion of many reforms in the law, written thirty years ago. More than one-half of the measures there propounded, have, of late years, and most of them since his lamented decease, been adopted by the legislature; a strong presumption in favour of his plans generally.

Sergeant Maynard and other eminent lawyers were members of it. From their numbers, fifty-one, I presume they subdivided themselves for the convenience of inquiring separately into different branches of the subject. Upon their reports several Bills were brought in for the general reform of the Law; but in tracing their progress through the House, the prorogation appears to have come before any of them was passed. After a long interval of various fortune, and filled with vast events, but marked from age to age by a steady course of improvement, we are again called to the grand labour of surveying and amending our Laws. For this task, it well becomes us to begird ourselves, as the honest representatives of the people. Dispatch and vigour are imperiously demanded; but that deliberation, too, must not be lost sight of, which so mighty an enterprise requires. When we shall have done the work, we may fairly challenge the utmost approval of our constituents, for in none other have they so deep a stake.

In pursuing the course which I now invite you to enter upon, I avow that I look for the co-operation of the King's Government; and on what are my hopes founded? Men gather not grapes from thorns, nor figs from thistles. But that the vine should no longer yield its wonted fruit—that the fig tree should refuse its natural increase required a miracle to strike it with barrenness. There are those in the present Ministry, whose known liberal opinions have lately been proclaimed anew to the world, and pledges have been avouched for their influence upon the policy of the State. With them, others may not, upon all subjects, agree; upon this, I would fain hope there will be found little difference. But, be that as it may, whether I have the support of the Ministers or no—to the House I look with confident expectation, that it will controul them, and assist me; if I go too far, checking my progress—if too fast, abating my speed—but heartily and honestly helping me in the best and greatest work, which the hands of the lawgiver can undertake. The course is clear before us; the race is glorious to run. You have the power of sending your name down through all times, illustrated by deeds of

higher fame, and more useful import, than ever were done within these walls. You saw the greatest warrior of the age—conqueror of Italy—humbler of Germany—terror of the North—saw him account all his matchless victories poor, compared with the triumph you are now in a condition to win—saw him contemn the fickleness of Fortune, while, in despite of her, he could pronounce his memorable boast, "I shall go down to posterity with the Code in my hand!" You have vanquished him in the field; strive now to rival him in the sacred arts of peace! Outstrip him as a lawgiver, whom in arms you overcame! The lustre of the Regency will be eclipsed by the more solid and enduring splendour of the Reign. The praise which false courtiers feigned for our Edwards and Harrys, the Justinians of their day, will be the just tribute of the wise and the good to that Monarch under whose sway so mighty an undertaking shall be accomplished. Of a truth, sceptres are most chiefly to envied for that they bestow the power of thus conquering and ruling thus. It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier years were lost—that he found Rome of brick, and left it of marble; a praise not unworthy a great prince, and to which the present reign has its claims also. But how much nobler will be our Sovereign's boast, when he shall have it to say, that he found law dear, and left it cheap; found it a sealed book—left it a living letter; found it the patrimony of the rich—left it the inheritance of the poor; found it the two-edged sword of craft and oppression—left it the staff of honesty and the shield of innocence! To me, much reflecting on these things, it has always seemed a worthier honour to be the instrument of making you bestir yourselves in this high matter, than to enjoy all that office can bestow—office, of which the patronage would be an irksome incumbrance, the emoluments superfluous to one content with the rest of his industrious fellow-citizens, that his own hands minister to his wants: And as for the power supposed to follow it—I have lived near half a century, and I have learned that power and place may be severed. But one power I do prize: that of being the advocate of my countrymen here,

and their fellow-labourer elsewhere, in those things which concern the best interests of mankind. That power, I know full well, no government can give—no change take away!

I move you, Sir, "That an humble Address be presented "to his Majesty, praying that he will be graciously pleased "to issue a Commission for inquiring into the defects occa- "sioned by time and otherwise in the Laws of this realm, and "into the measures necessary for removing the same."

INDEX.

ABUSES—cannot be rectified by merely praising our excellent institutions, page 51
——— remedies proposed, 51
Accomplices—entitled to credit in all particulars, if confirmed in some, 94
Account, action of—might be rendered very useful, 59
Administration of justice—importance of pure, prompt, and cheap, 4, 5
Admiralty—Judge of High Court, improperly paid, 25
Ambiguity—Patent and Latent, 95
Appearance—might be advantageously dispensed with, 67
Arbitration, Court of—much that goes to Equity might be disposed of by it, 59
———, the cheapest and most powerful machinery ever set up, 59
———, exists in France, in Denmark, and Holland, 63, 64
Arrest, Law of—sound principles stated, 65
———, contrasted with the presumptions of the law, 65, 66
———, advantages of a reformation, 67
Attorney-general—refused his *fiat*, 47

Bacon, Lord—principle laid down as to written instruments, 95
Bail Court—its evils exposed, 12
———, remedy suggested, 21
Bankruptcy—bars the Entail by statute, 55
———, *sed vide* cases cited in Note, 55
———, distribution of effects capable of much improvement, 114
Beer Bill—elicited numerous evils in the licensing system, 39
Borough English—inconvenience of different tenures, 44

Certiorari—expense of £10,000 incurred, 50
Chamber Business—wastes the time of Judges, 12
———, remedy proposed, 21
Chancery Court—might be relieved by the Exchequer, 24
———Parkes's history of the court, 116
Church Rights—ought to be subjected to limitation, 102, 103
———, instances of clergymen retaining both composition and tithes, 102
Circuits—their irregularity condemned, 21, 21, 23
Civil Law Courts—their constitution, 24
———, mode of appointing the Judges condemned, 26
Clergymen—impropriety of making them magistrates, 36
Collateral Issues—repugnance to try them sometimes interferes with the course of evidence, 93
Colonial Law—extreme diversity of it, 28
———, administered by military officers, 30
Commercial Law—why left out of view, 3
———, well adapted to its purpose, 113
Commitments—increased by many causes, 41, 42
———, anecdote respecting a punch-bowl, 42
Common Pleas—contest with King's Bench, 6
———, its inequality of business accounted for, 7
———, monopoly of causes by sergeants, 7
———; proposal to send there, actions partaking of real actions, 24
———, fines levied, and recoveries suffered there, 54
———, crier of the court is voucher for millions of property, 56
Construction—ought to be uniform in wills and deeds, 95
Copyhold—cannot be touched under execution, 107
———, diversity of copyhold tenures, 44
———, compared with the *Pays de Coutume*, 45
———, held not to be within the Statute of Uses, 58
Costs—claimant pays no costs in real actions, 106
——— evils of the present system, 111, 112
——— dignity of the crown in respect to costs, 49
County Courts—ought to be diligently reformed, 63
County Rates—commitments increased by burdening them with witnesses' expenses, 41
Cour de Conciliation—in France, 64
Criminal Law—why passed over, 2, 3

Cromwell—at the head of the Commons in a commission for amending the law, 116
———. draughts of fourteen acts prepared by them, 116, 117
Crown Law—impartiality not pretended to, 46
———, anecdote in proof, 47
———, instances stated, 48, 49, 50, 51
Customary Tenures—their variety and numerous inconveniences, 44
Custos Rotulorum—his fitness for—appointing District Judges, disputed, 35

Damages—common law looks to damages *only*, 107
——— unless where inconsistent with itself, 107
Declaration—ought to disclose plaintiff's demand, but does not, 70
Delegates—absurd formation of the court, 26, 27
Demurrer—the crown not concluded, 48
——— is an admission of the fact, to establish a *denial* that the law warrants the inference attempted to be raised upon the fact, 78
——— the law should first be determined, 79
Detinue—delivery in kind not compellable, 107
Dower—a rational mode of barring dower proposed instead of the present indelicate and unsatisfactory practice, 55

Ejectment — absurdity of two actions where one would suffice, 60
——— proof required of plaintiff's title, if out of possession a single day, 105
Eldon, Lord—rule laid down by him for striking magistrates off the list, 35, 36
Election—the law of arrest perverted for election purposes, 66
Elegit—copyhold property not extended by it, 45
——— judgment-creditor takes half the freehold by elegit, 107
Entails—substantially proper, 54, 57
——— if barred, in bankruptcy, *vide* note, 55
——— new mode of rendering entailed property alienable, proposed, 57
Entered causes—at the present day, 700 or 800, 13
——— formerly, 30 or 40, 13
——— in the time of Lord Mansfield, 60, 13
Equity—why omitted, 2
——— Lord Chief Baron allowed to sit in equity, 24
——— superintendence, not decision, the proper province of a Court of Equity in matters of account, 60
Equity—Courts of Equity have improperly trenched upon the province of juries, 85
——— Why is a party allowed to swear in his own behalf in equity, and not before a Jury? 87
Error—principal evil stated—remedy proposed, 111
Evidence—ought the testimony of the parties to be excluded? 85
——— rule laid down in the Queen's case, 86, 92
——— inconsistency of the law, 87
——— how far interest should disqualify a witness, 88
——— religious opinions ought not to disqualify, 93
——— the rule as to letting in the books of a deceased man, 90
——— the rules for examination of witnesses, generally speaking, unexceptionable, but a want of uniformity in the practice, 91
——— injurious presumptions affecting evidence, 94
——— sound rules of evidence stated, 99, 100
——— as to written instruments the Scotch Law deserves imitation, 61
Exchequer Court—jurisdiction, 7
——— variety of its functions, 8
——— its inequality of business accounted for, 8, 9
——— monopoly by attornies and clerks, 8
——— proposal to send there tithe causes and bills of exchange, 24
——— proposal to divide the Court between two Judges, 24
Execution—English system the very worst in Europe, 106
——— principles laid down, 107
——— departures from them exemplified, 107
——— frequently and substantially frustrated, 107, 108
——— on partnership property, note 113

Fees—proposed as a moderate increase to Judge's salary, 15
Fictions—Sir W. Blackstone puzzled to prove them useful, 46
——— can only be defended by lunatic logic, 56
——— in a contest for jurisdiction, 6, 7
Fines and recoveries—ought to be abolished, 54
——— Recoveree's heir at law lost an estate by a blunder, 56
Formedon — limitation is twenty years, 102
Freehold—judgment creditor may take half the freehold by elegit, 107

Game Laws—partiality of the tribunal, and futility of appealing from it, 39
——— extensive powers in irresponsible hands, 40
Gavelkind—inconsistency and inconvenience of different tenures, 44
Guildford—Lord Keeper, extracts from North's Life of, 6

Heir—takes land in preference to creditor, if debtor dies before judgment can be obtained, unless the debt is on bond, 108
Humphreys, Mr.—has greatly benefited the law of real property, 4

Indebitatus assumpsit—eight defences may be set up, 73
——— double pleading, 77
Indian Judicatures—proposal to improve them by introducing juries, 32
——— aptitude of the Indian mind for the change, asserted, 33
——— and illustrated by an anecdote of a young Brahmin, 34
——— character of local judges, 33
——— policy of giving the natives a share and an interest in dispensing the laws, 34
Innovators—described, 14
——— the old law, in fact, maintained by seasonable change, 109
Insolvent Estates—unequally distributed, 109
——— unjust preference in case of death, 110
Johnson, Sir Alexander—success of his efforts in Ceylon, 33
Jones, Mr. Serjeant—defeated, by the refusal of 8 tales, in a most atrocious case of perjury, 50
Issues—principles laid down which conduct to issue, 103
—— present practice might be improved, 103
—— counsel obliged to open in the dark, 103
Judges, insufficiency of twelve, 14
——— salaries considered, 15
——— promotion, for party objects, reprobated, 16, 17, 18, 19
——— political leaning asserted and accounted for, 19
——— time wasted in Bail Court and Chambers, 12
——— In Civil Law Courts, underpaid, 25
——— differ much in taking notes, 105
Juries, a wholesome, wise, and almost perfect method, 85
——— have been improperly superseded by the Courts of Equity, 85
——— their province unduly narrowed, 95
Juries—should try all matters of fact, wheresoever disputed, 100
——— eulogium on the institution, 5
——— unfit for trying account and set-off, 64, 65
Jurisdiction of the Courts, 5, 6
Justice-of-peace system—described and considered, 34, 35

King's Bench—jurisdiction, 5, 6
——— contest with Com. Pleas, 6
——— experiments to lighten its business, 10
——— evils of the present arrangement, 11, 12

Law—its paramount object is to be a rule of life, 95
Lease—effect of agreement for, 58
Legatee—should be allowed to sue an executor, 59
Libel—the truth of a publication being the best test of its motive, ought to be admitted in proof, 92
Licenses—granted or withheld, absolutely and without any practical redress, 37, 38
——— partiality of the bench towards brewers, 38, 39
Limitations of Actions—this branch of law is very imperfect, 100
——— even the Statute has been much thwarted, 101
——— the Statute should be propped, 101, 102
——— in real actions, thirty years should be fixed, 102
——— ought to affect church rights, 102, 103
Lyndhurst, Lord—intends to propose a Bill for reform of Equity, 2

Mackintosh, Sir James—prevailed on the House to attend to the subject of Reforming the Criminal Law, 2, 4
Mansfield, Lord—his remarks on Executions, 108
Masters' Office—this appendage to Chancery, which fits it for matters of account, might be attached to the King's Bench, 59
Meade—prosecuted for perjury and murder, 51
Money paid into Court—extension of this salutary rule, recommended, 63
Monstrans de Droit—remedy against the Crown, 46
Mortgagor—should be allowed to sue for his rights, 59

Napoleon Buonaparte—one Napoleon not enough for the pleader, 76
——— his Code, a wonderful monument of genius, 90

Napoleon Bonaparte—his memorable boast, with reference to his code, 119
Nisi Prius—proposal to divide the business between two Judges, 23, 24
——— list of 50 verdicts, at Lancaster, *analysed*, 64
——— sworn short-hand writer should take down every case, 104

Outlawry—in civil actions—extremely foolish, 67, 68
——— practice in Exchequer cases, 68

Parkes—his History of the Court of Chancery, 116
Partnership—a man can hardly tell whether he is a partner or not, 113
Peel, Mr.—exhorted to persevere in reform, 3, 4
——— to exclude party motives from judicial appointments, 20
Perjury—atrocious instance of, 50, 51
——— encouraged by the present obscurity in pleading, 73
——— two witnesses necessary to prove it, or one witness, with the defendant's hand-writing, 94
Perrin *v.* Blake—comment upon that case, 96
Petition de Droit—termed a decent and respectful remedy, 46
——— Attorney-General refused his *fiat* in a case of great hardship, 47, 48
Pleading—was anciently oral, now in writing, 68
——— first in French, then in Latin, now in English, 68
——— Lord Coke's punning etymology of the word, 68
——— vicious nature of modern pleading, 69, 70, 71
——— vagueness of plaintiff's declaration, 72, 73
——— defendant's plea equally indistinct, 73, 74
——— inconsistency of many rules in pleading, 75
——— double pleading, 76, 77
——— Solicitor's detail of vexatious pleas, 81
——— Blackstone's panegyric on pleading, 74
Powers—unsafe to give an opinion upon any power that has not received a judicial construction, 98
Presumptions—affecting evidence ought to be excluded, 94
Privy Council—Supreme Judges in the last resort over colonies, 27
——— its sittings described, as inadequate, 29
——— number of appeals disposed of, 30
Privy Council—their manner of performing the duties, 31
Quarter Sessions—name for nobody, 40
Queen of Ramnad—appeal upon the succession to her throne, lodged in 1814, and still pending, 31
Quia timet—a declaratory action in the Scotch law, recommended, 53
Quotation from North's Life of Lord Guilford, 6
——— scripture, a warrant for impartiality, 61
——— Mr. Justice Blackstone, 74, 82, 83
——— Solicitor's letter, detailing an action, 80, 81, 82
——— Lord Mansfield, 108
——— Lord Hale, 115
——— Shepherd's Touchstone, 116

Real actions—sin against all sense and justice, 105
——— claimant pays no costs, 106
Real property—law of, not hereto considered, 3, 4
——— assimilation of the laws affecting real estates, proposed for all England, 45, 46
——— indebted to Mr. Humphreys, 4
Recovery—see *fine*, destroys the will, unless it is republished, 97
Reform—what is a rational and temperate reform, 114
——— authorities on the subject collected by Mr. Parkes, 116
——— drafts of 14 acts, under Cromwell, 116, 117
——— course of improvement in times past, 118
Religious opinions—why should any class of persons be excluded in criminal, though admissible in civil cases? 94
Replevin—delivery in kind not compellable, 107
Replication—ought to be co-extensive with the multiplication of pleas, 78
Romilly, Sir S.—his zeal in reforming the Criminal Law, 2, 4
——— his valuable manuscripts, note, 117
Rules—privilege grossly abused, 108
——— ought to be abolished simultaneously with other reforms, 110

Salaries—proposed to be moderately increased by fees, 15
Scotland—examples of promotion to the Bench in, 18
——— rational and equitable Law of Debt, 45
——— mode of proceeding there recommended in certain cases, 52, 53

Scotland—costs, always in the discretion of the court, 53
——— the Scotch law, as to written instruments, commended, 61, 62
——— a debtor's person only arrestable there, if he be in *meditatione fugæ*, 67
——— Commission appointed—with good effect, 114
——— Statute Book in three small pocket volumes, 114
Shelley's Case—Remarks upon it, 95
Short-hand Writers—should be employed in all Nisi Prius cases, 104
——— abridge delay and expense in parliamentary committees, 105
Stamp — Case of Lord Dudley being obliged to apply for a new trial, upon an alleged insufficiency of the stamp, 80
——— Defendant pays costs in stamp prosecutions, 50
Statute—4 Anne, effect on pleading, 76, 77
Statute of Frauds—highly extolled, suggested improvement, 90—
——— bulwark against perjury, 102
Statute of Uses—Lord Hardwicke's severe remark, 57
——— Proposal to restore Trust Estates to the jurisdiction of Common Law, 58
Tales—perjury unpunished for want of tales, 50
Taxation of costs—improvement suggested, instances, 112
Taylor, M. Angelo—reform of equity is still in his hands, 2
——— improvement in copyhold tenures, 44
Tenterden, Lord, his amenity and dispatch in business, 23
Tenures—inconveniences of their diversity, 44
Terms—the absurdity of their present regulation, 21
——— proposal for making them immoveable, and independent of Popish festivals, 22
——— great inconvenience to the profession, 23
Tithes—a period of limitation should be affixed, 103
Triccum in lege, 7
Twelve, number—Lord Coke's rapturous admiration of the, 13
Twelve, number—insufficiency of twelve Judges, demonstrated, 13, 14
Variance—instance of a fatal variance in perjury, 79
——— improvement suggested, 79
Vexatious Litigation—by what means to be repressed, 51
——— arbitration, useful for that purpose, 64
——— Luke Robinson's case in trespass, 83, 84
——— Solicitor's letter on the case of a Welch clergyman's widow, 80
Unpaid Magistracy—a direct remuneration preferable to jobs, 40
——— anecdote in illustration, 41
——— their qualifications and responsibility contrasted with the Judges of the land, 43
Untried Causes—Lord Ellenborough 588, 9
——— Lord Tenterden 850, 9
Uses, contingent and executory—formulæ proposed, 99
Wager of Law—modern instance, 53
——— in detinue, 107
Welch Judicature—the worst that ever was established, 14
——— three great defects pointed out, 20
Wife—a substitute proposed for the present practice of barring dower, 55
——— various copyhold rights, 44, 45
Wills—construction of words, 95, 96
——— effect of appointing a debtor, executor, 96, 97
——— two wills made of the same date, 97
——— effect of suffering a recovery, 97
——— revoked by a conveyance to serve a use, 97
——— rules of evidence should be uniform, 99
——— with reference to copyhold, 44, 45
Writ of Right—party in possession must expose his title, 105
——— remarkable case at York in 1826, 106
Written Evidence—capriciously required and dispensed with, 90
——— court construes written instruments, 95
——— ought to be in the province of the Jury, 95

'OSTSCRIPT.

UPON the Adjourned Debate on Mr. BROUGHAM'S Motion, on Friday, February 29, the following Resolution, substituted by him with the assent of the Government, was unanimously carried :—

"That an Humble Address be presented to his Majesty, "respectfully requesting that his Majesty may be pleased to "take such measures as may seem most expedient for the "purpose of causing due inquiry to be made into the origin, "progress, and termination of actions in the superior Courts "of Common Law in this country, and matters connected "therewith; and into the state of the Law regarding the "Transfer of Real Property."

LONDON
Printed by WILLIAM CLOWES,
Stamford-street.

ON THE

RISE, PROGRESS,

AND

PRESENT STATE

OF

PUBLIC OPINION,

IN

GREAT BRITAIN,

AND

OTHER PARTS OF THE WORLD.

LONDON:

SAUNDERS AND OTLEY, CONDUIT STREET.

MDCCCXXVIII.

LONDON:
Printed by WILLIAM CLOWES,
Stamford Street.

PREFACE.

THE intention of the writer in the following pages is to attempt to ascertain what is Public Opinion. This sentiment will be defined and traced from its dawn to the present time, in Great Britain and other parts of the world, and its actual and future influence delineated.

Afterwards the writer will endeavour to show that public opinion has, of late, much increased; that its power and influence depends on certain qualities in the people which will be styled the requisites for the formation of public opinion; that, in proportion as those requisites become general in any community, in the same proportion does the form of government become constitutional, and indicate greater regard for liberty. The opportunity will also be taken of inquiring how far the two Houses of Parliament in this country are responsive to public opinion; and of stating in what manner the increase of

wealth, occasioned by the general use of machinery, is likely to affect that sentiment.

In speaking of communities, the word happiness is applied to those that enjoy, in a greater degree, the necessaries and comforts of life. When speaking of individuals, this word might not be proper, as it does not follow that the richest is, of course, the happiest; but when applied to an entire people, is intended to designate those that possess certain necessaries and comforts, and suffer the least privations.

The terms wealth and disposable capital are used occasionally, as having the same meaning when their effects on the community are the same.

Religious feeling and moral principle are also, at times, used indiscriminately; as it is taken for granted, that moral principle in a community can scarcely exist without a proper sentiment of religion. Something like analogy is found in most subjects that usually come under consideration, to direct the judgment; but the rise and state of public opinion is of too recent a date to enable one to receive much assistance from such a mode of reasoning. Some pains, therefore, are necessary to gather from the data in our possession the necessary results.

The author does not desire to obtain pardon for any faults or errors that he may commit, but to express a hope that slight or inadvertent mistakes will not condemn the whole: the principles laid down, he thinks, are correct, and the inferences drawn consistent with the character of mankind.

It is difficult for any one who has sat in parliament to avoid entertaining on some subjects a bias of opinion: from this the writer cannot, without presumption, pretend to be exempt more than his neighbours. On the present occasion, it has been his anxious endeavour to correct whatever partiality he might entertain for any opinions; and although he may not, through the infirmity of human nature, have succeeded as effectually as he could desire, he consoles himself with the consciousness of having used his best endeavours, as far as his limited powers would admit, to make candid statements, and to deduce from them impartial conclusions.

In a constitution like ours, where parties in politics exist, it is scarcely possible not to have a leaning more to one side than the other: perhaps the best plan for any one who presents himself before the public (as a writer on a sub-

ject in which they are concerned) is to admit the fact, to endeavour to correct and keep a guard on his prepossessions, and to crave indulgence for a feeling common to the sons of humanity.

The writer has preferred the risk of occasional repetition, and even of inelegance, to that of obscurity, an unpardonable fault in a work of this description: he has, therefore, to request indulgence for any tautology or accidental omissions that may occur; the former arising from a desire to be clearly understood, the latter being almost inseparable from this sort of production on its first appearance.

London, February, 1828.

CONTENTS.

INTRODUCTION. Page

Definition of the Classes of Society 2
That the creation of Wealth and the use of Machinery alters the situation of the Classes of Society with regard to each other 9
Facility of Communication 12
Definition of Public Opinion 15
Popular clamour 17
Public Opinion, in a civilized country, affects the form of Government, instead of Government influencing Public Opinion 23

CHAPTER I.

Section 1. On the rise of Public Opinion in England..... 37
„ 2. On the imperceptible and gradual Increase of the Middle Class 45
„ 3. Further Remarks 48
„ 4. On the Reformation 57
„ 5. On the state of Information in the Community... 59
„ 6. On the Revolution and Civil Wars 66
„ 7. Subsequent Observations..... 74
„ 8. On the Events that occurred at the conclusion of Cromwell's Protectorate 75

CHAPTER II.

Section 1. From the Restoration in 1660, to the calling in of the Prince of Orange 78

CHAPTER III.

Page
From the Arrival of King William to the Accession of George IV.
Section 1. General Observations 94
„ 2. From the end of William's reign to the Death of Queen Anne 96
„ 3. From the Accession of George I. to the Death of George II..... 105
„ 4. Reign of George III. 113
„ 5. On the American War 117
„ 6. The French Revolution and Public Opinion in England..... 123
„ 7. Resumption of Hostilities after the Peace of Amiens 132
„ 8. Invasion of Spain by Napoleon 139
„ 9. Abdication of Napoleon and pacification of Europe 141

CHAPTER IV.

On the present state of Public Opinion in England 147
Section 1. That the alteration in the Currency and in the value of the produce of land tends to diminish the Upper Class 148
„ 2. On the Improvement and increased Use of Machinery daily taking place 154
„ 3. The great Increase of Personal Property..... 160
„ 4. That the Increase of Capital renders Public Opinion more powerful 174
„ 5. On the influence of Property in Great Britain .. 176
„ 6. Influence of Public Opinion in the House of Lords 178
„ 7. On the House of Commons 184
„ 8. Further Observations 202

CHAPTER V.

Section 1. State of Public Opinion on the Continent of Europe 207
„ 2. On the state of Public Opinion in France 220
„ 3. On the state of Public Opinion in Spain and Portugal 247
„ 4. On the state of Public Opinion in Italy 264

Page

Section 5. On the state of Public Opinion in Germany 274
„ 6. On the state of Public Opinion in Russia 280
„ 7. On Public Opinion in other parts of Europe 284
„ 8. On the State of Turkey 292

CHAPTER VI.

On the state of Public Opinion in America and other Parts of the World.

Section 1. On the present state of Public Opinion in the United States of North America..... 300
„ 2. On Public Opinion in Mexico 306
„ 3. On Public Opinion in Brazil 309
„ 4. On Public Opinion in Peru, Colombia, and Chili 311
„ 5. On Public Opinion in Asia 315
„ 6. On Public Opinion in Africa..... 318

CHAPTER VII.

Section 1. On the Progress of Public Opinion and Civilization 321
„ 2. Retrospective and future View of Public Opinion 332
„ 3. Concluding Observations 336

ON PUBLIC OPINION.

IT is intended to shew that public opinion is a sentiment that depends on the degree of information and wealth, which together may be styled civilization, and also with a proper religious feeling that exists in any community.

Wealth is much augmented by improvement in machinery, which, in fact, creates surplus hands to labour. In the present day, education and civilization in the community follow the acquisition of independence or the acquirement of a certain degree of wealth; consequently improvement in machinery increases civilization. As capital increases in any country, the proportion of the several classes of society varies with regard to each other; the upper, but especially the middle class, increases in greater ratio than the lower class. Before, however, we proceed further, it may be requisite, for a clear comprehension of the subject, to define the several classes of society; a subject of greater importance than is generally imagined: for, as we have said, it will appear that public opinion, and even the form of government in any country, depends in a great measure on the relative strength and proportion of the several classes, when compared to each other.

In a country where the laws are equal, the only means left of defining the several classes of society is by property, which as long as freedom and civilization exist, can possess the only power or influence in the state. Titles, rank, orders, or decorations cannot be taken into the account, be they ever so respectable, for although they may influence particular individuals, and be highly and deservedly respected by them, yet they carry not weight on society at large, or possess intrinsic power in the community.

As the value of money fluctuates considerably, the best plan to be adopted as a measure of the several classes of society, may be to ascertain the means possessed by the individuals of which each class is composed, of supporting so many day-labourers; this of course will vary with the value of produce, yet being a sort of standard (though not always a correct one) of the value of labour, and the price of the produce of land, may, perhaps, answer as well as any other, even if not so accurate a measure for the purpose as might be desired, but sufficient in the present instance to answer the purpose.

We trust, in our definition of the several classes, we may not be supposed to entertain any disregard towards rank or situation in life. Where freedom and civilization exist, wealth is so entirely the only power either to individuals or to government, that no other means or choice is left of distinguishing the several classes of society, than by the property of the individuals of which they are formed.

A community may be separated into three classes, of which, in Great Britain, the upper class may be said to consist of all those individuals who have the means of constantly supporting one hundred, or any greater number of men fit for labour *.

The middle class may be said to consist of those individuals who have the means of supporting from two to a hundred men fit for labour.

In order, however, to be distinct and correct, it will be further requisite to separate the middle class into two parts, which may be called the first and second parts of the middle class; the first part to consist of all those individuals, who can constantly command the labour of from twenty to one hundred labourers; the second part of those individuals who can constantly command the labour of from two to twenty labourers.

The lower class may be said to consist of all those persons who are not included in the upper and middle classes.

In the same manner as we separated the middle class, we may separate the lower class, into a first and second part, the first part to consist of those individuals who can command the constant labour of two labourers;

* Supposing the wages of a good day-labourer be taken on the average, to amount to 2*s.* per day, or 12*s.* per week. In six working days, which for one man during the year would be 31*l.* 4*s.* this multiplied by 100 would give the minimum of the income of those included in the upper class; however as no great inconvenience can occur by taking round numbers, let us reduce the expense of supporting an able day-labourer by 1*l.* 4*s.*, and take it at 30*l.* per annum, thus making the minimum of income of the upper class 3000*l.* per annum.

and the second part, of those individuals who cannot command any labour besides their own.

By this subdivision we have, for all practical purposes, the entire community separated into five distinct divisions, and when such subdivision is not found requisite, we can revert to the simple and obvious division of the upper, middle, and lower classes so easily explained *.

In this division of the several classes, it signifies little whether the estimate has been made too high or too low; a desirable object is obtained, that of establishing distinct classes of society, and of defining them in a certain manner, a necessary requisite for the purpose of making our subsequent observations clearly understood †.

The state of civilization, it may also be said of enjoyment, that any community possesses, seems to be ascer-

* It must be remembered that all the persons in the community are included in one or other of these classes, from whatever source their income is derived, either land, the funds, real or personal property of every description, and that arising from professional exertions, &c. &c., provided the clear amount received in the year rises to the value above estimated.

† Thus it appears that the upper class consists of those individuals who can support one hundred or more able-bodied labourers, that is of men who have an income of 3000*l.* and upwards.

The first part of the middle class, of those individuals who have an income of from 600*l* to 3000*l.*

The second part of the middle class, of those who have an income of from 60*l.* to 600*l.*

The first part of the lower class, of those who have an income under 60*l.*

The second part of those who have only their manual labour or personal exertions on which they can depend.

tained by the proportion of the upper and middle classes, when compared to the lower class. The more extensive are these two classes, the greater is the proportion of wealth and comfort distributed through the community. Let us look at the state of England during the last eight hundred years. For a number of centuries, subsequent to the conquest, there was no middle class of society in this country; a few great proprietors, including the crown lands, an immense lower class, with those persons belonging to the church, formed the community. As long as the population continued solely occupied in agriculture, this continued to be the case. The middle class arises (except in newly-colonised countries, where the settlers obtain land at will) from the creation of capital made by commerce or manufactures. In no country in Europe have these been so flourishing as in England; in no country in Europe has more capital been created, or does a more extensive middle-class exist, or is public opinion so powerful.

When the following pages are perused, and the existing state of public opinion observed in all parts of the world, the reader, perhaps, will not think the following conclusions made too hastily, or not borne out by facts which will be adduced.

1. That the extent or power of public opinion is in proportion to the information, proper religious feeling, facility of communication and capital that exist amongst the individuals of which the community is composed, which may be styled the requisites for public opinion *.

* It cannot be denied that Great Britain is the freest state in

2. That the extent or power of public opinion depending on these requisites, resolves itself into the question whether such a community is possessed of an extensive middle class of society, when compared to the lower class; for the advantages called requisites for public opinion, cannot exist without forming a proportionate middle class.

3. That in every community or state where public opinion becomes powerful, or has influence, it appears that the form of government becomes liberal in the

Europe, and that it enjoys the requisites for public opinion more extensively than any other. In looking over the continent, we shall find, invariably, that as the people in any country are deficient in the requisites for public opinion, and are poor, ignorant, with no facilities for communication, they are under the worst and most despotic forms of government. Take Turkey as an example, and after Turkey, any other that most approximates to that state of things, and its government will be found to be the next in unlimited power and despotism, and so on. This reflection affords the first idea which will be enlarged on in the following pages, that it is not the government that moulds the people or grants them liberty, &c., as is commonly imagined, but the reverse; that it is the requisites for public opinion, and the civilization of the people that makes the government liberal and free, or the reverse. It may be said that a despotic government can encourage a state of barbarism by preventing commercial intercourse, checking the spread of information, and calling to its aid those superstitious feelings which have sometimes more power and influence over an ignorant people than even the terrors of despotism. By this latter engine the Turks, perhaps, have been kept longer in barbarism and under a despot than they would otherwise; but were it not for this sentiment, it is clear that the mere power of despotism could scarcely put an entire stop to commercial activity or enterprise. The Turkish government could not effect this with its Greek subjects; even Napoleon, in the height of his success and the fulness of his power, could not prevent the intercourse between England and the continent.

exact proportion as the power of public opinion increases.

These conclusions, as we proceed in our remarks, will be again alluded to more fully, and proved by what has already taken place in Europe.

In tracing the rise, progress, and present state of public opinion in England, recourse must be had to its history. For this purpose some allusions will be made to the reports of those historians whose statements are likely to be impartial and correct: without referring to history, it would be impossible to trace out public opinion with any accuracy. The discoveries made of late years in machinery, by means of steam and otherwise, which may be called the powers of machinery, prove of great importance to the extension of public opinion, by increasing and distributing the capital, and, consequently, augmenting the middle class of society*.

It may be thought by some, that public opinion, in a

* In the inventions that have taken place in the powers of machinery, it seems that at first a discovery might be made, improved by accident and by the labours of several individuals, so as to render it difficult, if not impossible, to ascertain with precision the exact period or the person by whom any important invention was first discovered. The same, in some measure, occurs with regard to public opinion: there is some difficulty in precisely tracing its first appearance, as it might exist in a slight degree before it came into the notice of cotemporary or subsequent historians, to whose accounts only we can look for information. The plan, therefore, in this work, must be, not merely to attend to the reports or observations of historians, but to the facts which they relate, such as the alterations or improvements in the laws, the revolutions, civil wars, or any remarkable changes that have occurred.

community, might exist without the requisites for its formation that we have mentioned: however, if the state of any commonwealth in former times, or of late years, is attentively considered, it will be found that nothing like public opinion has ever existed, unless the individuals of the community have been possessed of proper religious feeling, information, &c. &c., already mentioned. Public virtue seems a necessary requisite to render public opinion of importance *. From the result of our inquiries on public opinion, it will appear that wherever that sentiment is in existence and sufficiently powerful, there liberty and a liberal government are also established. If, however, a liberal government and liberty are established with a people where the requisites for public opinion are not found, such

* This seems to have been exemplified in France previously to the treaty of Amiens. At this time France was civilized to a certain extent, a sentiment also of popular feeling existed in and pervaded the country, but it had not public virtue as its basis, and from a deficiency of this requisite amongst the bulk of the people, their ideas took a turn to conquest, dominion, &c. &c. The result of this was, after a tremendous struggle for liberty, the nation fell under a sort of military dictatorship, riveted on them by the talents of their chief, assisted by the army, and by a prevention of popular feeling (far different from public opinion) that was prevalent amongst the people.

During the reign of Augustus, in Rome, it appears that a degree of wealth and some civilization existed, but it was unattended with any sentiments in the people resembling public opinion. No proper religious feeling or moral principle existed; there was little facility of communication, and that mighty engine for spreading information far and wide, the press, was not in existence. The people gradually sunk into despotism, and by degrees relapsed into ignorance and barbarism from which they had scarcely emerged.

liberty and government are on a very sandy foundation, and easily overturned. This seems to prove that public opinion secures a liberal form of government, not that a government secures public opinion.

It will appear that the civilization of society, and the influence of public opinion, depend, in a great measure, on the relative proportions of the three great classes of which it is composed with regard to each other.

Whatever, therefore, tends to alter that proportion, that is, to extend one class beyond the other, is of considerable importance on the state of society. Perhaps no discovery that has yet occurred, tends to alter that proportion so effectually as the improvements that have and which are taking place in machinery.

The increase of the powers of machinery tends to augment the middle class of society. Machinery, extensively used, augments the disposable capital in any country in a much quicker ratio than was ever before known. Commerce and manufactures were formerly the chief creative powers for wealth which increased the middle class, but now the powers of machinery are come to their aid, with a future power of extension and improvement that sets all reasoning by analogy at defiance.

In stating that the increase of capital increases the middle class in a community, it certainly is not intended to convey the idea that the upper class may not receive some addition, but that the addition in numbers is chiefly made in the middle class: this effect would follow even from the operation of law regulating property,

but that the production of capital in a country augments the middle class is sufficiently evident to be admitted at once *.

In short, wherever manufactures and commerce, and more particularly the use of machinery are most prevalent, there, *cæteris paribus*, will be found the middle class of society in a greater proportion. Wealth, in a certain sense, is command of labour; now it must be allowed that machinery increases this command of labour in the compound ratio of the increase and improvement of machinery, which last may be carried to an extent, the limits of which can scarcely be fixed.

We are, perhaps, too prolix in dwelling on the improvement of machinery in observations that regard public opinion; but machinery creates wealth, which augments the middle class, which last gives strength to public opinion; consequently, to allude to the extension of machinery, is to account for the increase of the middle class of society†.

* Not only does this effect follow from the creation of capital in a direct manner, but also in an indirect one, by increasing the industry of individuals, promoting the consumption and exchange of productions, &c. &c.

† The use of machinery by augmenting the quantity, and consequently lowering the price of commodities (which are improperly called manufactured goods, but which, having no other word, we must continue to call so) has given an extraordinary stimulus to the industry of mankind, confirming the observation made by M. Say, in his *Political Economy*, concerning low prices.

That the results arising from the improvemement of machinery and its increase, are almost beyond the grasp of the human mind to define, may seem probable from the change that has and is daily taking place in the world.

It is evident that, in the present situation of the world, that nation is the most powerful that is possessed of the greatest share of disposable capital; and also that, in the carrying on of a war, that nation has the advantage that has the most capital or credit; one or other of which (and the latter depends on the former) are absolutely necessary. Whatever nation, therefore, possesses most of these requisites, is likely, *cæteris paribus*, to bring it to a successful termination*.

It seems, therefore, but a natural conclusion, that, in whatever country machinery is established, a degree of capital will be created proportionate to the compound ratio of the amount, and of the perfection to which the machinery has been carried; and as disposable capital in its turn facilitates and encourages the formation and improvement of machinery, it is difficult to attempt to define where the augmentation of machinery, and, consequently, of disposable capital, and of the middle class of society will find its limits.

Since the invention and use of gunpowder, the art of war being totally changed†, that nation is, *cæteris*

* Supposing, for the sake of an example, that the work done in England by machinery, is equal to the labour of twenty millions of men (whether the estimate be correct or not, signifies nothing to the argument); supposing the average expenditure of one man, as a labourer, to be about 30*l.* in food, wages, and clothing; supposing such work was done by men, it would cost six hundred millions. Now the expense of keeping up the machinery before named would not certainly cost any thing like such a sum: the difference is consequently a saving to the country, or a creation of wealth to that amount.

† In barbarous days and former times, before the use of gun-

paribus, the most powerful that is the most wealthy. To carry on a war, money and credit are absolutely necessary, and whatever community possesses these requisites is most likely to bring it to a successful termination. The greater the quantity of machinery used in a country, the more wealthy, and, consequently, the more powerful does it become.

It appears, therefore, that the use of machinery augments the wealth, and, consequently, the middle class of society; at the same time it promotes facility of communication, and, consequently, increases the requisites for public opinion *. Facility of communication between

powder, the nation possessing the most abundant population, and those people that were most fierce and barbarous, were most likely to prevail in war, and to conquer the more civilized, wealthy, and luxurious nations. Armies or bodies of people were opposed to each other hand to hand, and victory crowned the most hardy, the strongest and most active. Since gunpowder has been in use, an entire change has taken place in war: that nation which can produce the best appointed and best disciplined troops, the best served artillery, the most efficient cavalry, that can lay up stores of provisions and ammunition, that has the best fortified places, in short, that has the command of the greatest wealth and credit, is most likely to come successfully out of the contest. The same may be said at sea of the best appointed and most numerous fleets, &c. &c.

Thus it follows that the nation that is most wealthy, and, therefore, most civilized, and where public opinion has the greatest weight, becomes also more powerful than it otherwise would be.

* Let us imagine two countries nearly equal in population, and in the advantages of soil, climate, and situation. Let us further suppose that one encouraged and promoted industry, commercial enterprise, improvement in machinery, and every other impulse for the creation of capital. That the other country confined itself entirely to the cultivation of the soil, and did not encourage, but rather prohibited, all commerce and manufacture, and improvement

one place and another in the same country, or between one country and another, is also one of the advantages arising from the creation of capital; and at the same time that this facility of communication may be created by civilization, it augments it in its turn in a great degree, and promotes the growth and strength of public opinion and of civilization*. It is evident that public opinion gains strength in proportion to the facility of communication. Taking for granted (which in fact would be an absurdity,) that any community could be perfectly civilized, and yet not have any facility of communication, either through the means of the press, or by intercourse between one place and another, it is very clear that in such a case public opinion would have no existence, as every one might be of the same

in machinery, and was secluded from its neighbours, having no foreign trade, and little internal communication. At the end of any given period, one or two hundred years, what a singular contrast would the two countries afford! The one would be rich, powerful, with a large middle class of society, highly civilized, influenced by public opinion, and with an extensive population. The other would, probably, be much in the same state at the end of the given period, that it was at its beginning, with little capital, and with its population nearly the same, consisting of an extensive lower class, a confined upper one, with a very small proportion of the middle class. This supposition is made, taking it for granted, that the land in the latter country was divided according to the old feudal system in Europe, and not newly colonized.

* That facility of communication depends on wealth cannot be disputed. Good roads, canals, harbours, ships, mail roads, steam-vessels, in short, every circumstance that tends to augment and promote the change from place to place of individuals or of articles of commerce, is caused by the wealth and civilization of a country, and in its turn increases that wealth and civilization.

opinion on any given subject; but if no means existed of communicating that opinion, it would have as little influence as the voice of the commanding officer of a regiment would have over his men if scattered over a country at a mile from each other. It must, therefore, be allowed, that facility of communication is one of the necessary requisites for the power of public opinion*.

It is now necessary to define what public opinion is.

* At the first reflection on the subject of absolute governments and the number of years that pure and genuine tyranny has ruled over the fairest portions of Europe, one may be surprised how such could be the case, how it was possible that such a form of government should be tolerated for such a length of time. On further consideration, however, it will not appear so surprising. The state of the people, their manners, way of thinking, bigotry in religion, &c. &c., must be considered. As to their state of information, it was amongst the mass of the people absolutely nothing, they were ignorant and even barbarous in the extreme, except the few individuals intended for the service of the church. Their means of information or facility of communication were none whatever. Their religious feeling, or moral principle, was just what suited the interests of the priests or upper clergy, influenced by that blind obedience prevalent formerly in the catholic church. Such were the lower class; the upper was not much better, and of the middle class, there were few, and those in the same state as the other two: under such circumstances a country could not be otherwise than under a despotic government. With such a people, those who desired to live in any sort of security, probably desired to be ruled by a despot whose determinations were quick and positive, who could repress licentiousness and enforce obedience. The people though barbarous, obeyed a despot, because any government is better than none; despotism preferable to anarchy until there was sufficient virtue, sufficient information, &c. &c., spread through the community; until the requisites for public opinion were found, it was impossible for the people to have liberty. A free and representative form of government without the requisites before mentioned, cannot be constructed; the materials are wanting.

Public opinion may be said to be, that sentiment on any given subject which is entertained by the best informed, most intelligent, and most moral persons in the community, which is gradually spread and adopted by nearly all persons of any education or proper feeling in a civilized state. It may be also said, that this feeling exists in a community, and becomes powerful in proportion as information, moral principle, intelligence, and facility of communication are to be found. As most of these requisites are to be found in the middle class of society as well as in the upper, it follows that the power of public opinion depends in a great measure on the proportion that the upper and middle class of society bear to the lower, or on the quantity of intelligence and wealth that exists in the community*. The best opinion on any subject, if made public in a community where little civilization or information exists (although these are very different terms, yet with people one seldom exists without the other), may by chance or through caprice be adopted by the people; but without the necessary requisites of civilization and moral

* In Turkey, the most ignorant and barbarous, and, therefore, the most despotic country in Europe, it is possible that some well informed, intelligent, and moral men might be found who would give the best opinion on any subject. Now if sufficient intelligence existed in that country, this opinion might be adopted by the community and become public opinion, but where there is no upper and middle class of society, and only an ignorant and almost barbarous lower class, such a feeling or sentiment on any subject would be entirely thrown away; like seed thrown on a barren or uncultivated soil which becomes useless, unless the ground is previously prepared or naturally very good.

principle actually exist, such an impression cannot be adopted from conviction, and has, therefore, but little power. Perhaps it may be thought that, in the following observations, too much stress is laid on the middle class of society, and its influence over-rated: the question may be put, Why is not an upper class, if sufficiently numerous, able to establish the power of public opinion? The answer to such a question would be, that an upper class, in a free country, where the laws give a man power over his property, and where no perpetual entails are in existence, cannot exist, or be sufficiently numerous, without, at the same time, the formation of an extensive middle class, greater in number and in amount of property. Where land constitutes the chief, if not the only property in a country, such, in the course of time, must be the natural result, even if civilization makes but slow progress *; but if commercial activity and manufacturing industry are prevalent, the amount of capital created will be such as to render, under almost any circumstances, the middle class more wealthy in the aggregate, and, consequently, more powerful than the upper; in other words, where commerce and civilization are known, although the upper class may be increased by their influence, the middle class is increased in a much greater proportion. To place an individual in the

* That is, taking it for granted that, by law, the inheritance in land goes only to the eldest son; of course, if to all alike, or to the other sons only, the operation of extending the middle class would be quicker at first, though after a time probably less.

upper class, both creation of capital, and accumulation of it, may commonly be necessary; creation of capital alone, without the other, may be sufficient for a place in the middle class. It may, therefore, be allowed, that a middle class, in a civilized community, not only is quicker in extending itself than an upper, but is also likely to be possessed, in the aggregate, of more property, and, consequently, independent of its numbers and activity, of more influence in the state*.

Having defined public opinion, and ascertained what are its requisites, which we request may not be forgotten in reading the following observations, it may be as well to allude to popular clamour, so often confounded with public opinion, yet so essentially different in every respect. Public opinion may be said to be powerful in proportion as its requisites are possessed by the individuals in a community; that is, in proportion as such community is well-informed, possessed of proper religious feeling, facility of communication, &c., already mentioned: popular clamour, on the contrary, is powerful in proportion as the lower class is ignorant and numerous, when compared to the other classes.

* Supposing an upper class to be in existence without a middle class, in a free community, which would, in fact, be absurd; supposing such upper class to be sufficiently well-informed and capable by information, facility of communication, &c. &c., of having the requisites for the formation of public opinion, yet it would want sufficient strength, unless possessed of almost all the property in the country, and supported by the clergy, such as it was in Catholic times, to prove a match for an ignorant lower class, headed by a favourite leader or a despotic sovereign.

Popular clamour may be said to be that sort of feeling, arising from the passions of a multitude acting without consideration; or an excitement created amongst the uneducated, or amongst those who do not reflect, or do not exercise their judgment on the point in question*.

It has been already stated, that public opinion augments in proportion as a community becomes civilized and enlightened. Now popular clamour rests on ignorance and prejudice: consequently, the prevalence of one cannot well exist with the power of the other †.

* In those countries, where the population is ignorant, and where the proportion of the upper and middle classes is small when compared with the lower, where, consequently, civilization has made little progress, and where the passions of the people are easily excited, there is popular clamour likely to be most powerful; although, from the state of despotism and strict police in which such countries are usually kept, such a feeling is seldom permitted to manifest itself. The organization of the human mind seems to be such, that in proportion as reason exercises its influence, the passions have less power; an uneducated multitude, therefore, who are unused to exercise the former, are more apt to be led away by the latter. It may appear paradoxical in any one to say, that popular clamour has probably less power in England than in almost any other country in Europe, because here public opinion is so strong: if popular clamour shows itself occasionally, that arises from the liberty enjoyed, and the mildness of the authorities in checking it, not from the strength that it possesses. On the Continent, such popular clamour, by being kept under from various causes, does not appear; but supposing all restraints taken off, it might be more powerful than in England. Where civilization and an extensive middle class are spread through a country, or, in fact, as public opinion is powerful, popular clamour is less so.

† It does not follow, however, but that public opinion and popular clamour may unite on any particular question. It is only intended to assert, that the one cannot be powerful in a country, if

The resolves of the ancients in their republics seem often to have been determined by popular clamour*,

the other is also powerful, as they arise from two totally distinct causes—information and ignorance.

The Chief Justice Mansfield seemed fully aware of the feeling of popular clamour when, in his speech in 1770, he says, "I defy him to point out a single instance of my life in which the popular clamour of the times ever had the least influence on my determination. I thank God, I have a more permanent and steady rule for my conduct, the dictates of my own breast. Those who have foregone that pleasing adviser, and given up their minds to be the slave of every popular impulse, I sincerely pity. I pity them still more if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them, that many who had been saluted with the huzzas of a crowd one day, have received their execrations the next; and many, who by the popularity of their lives, have been held up as spotless patriots, have nevertheless appeared on the historian's page, when truth has triumphed over delusion, the assassins of liberty."

* In general, we cannot approve of the custom of taking precedents, and of establishing rules for the present times, from the events that have formerly occurred, in the republics of Greece and Rome. Such allusions may serve to shew the learning of the parties by whom they are made, but are scarcely ever applicable to the subject, and instead of proving useful may lead into error. Let us, however, for once, be allowed, on a general position concerning human nature, and not on any particular case, to make an allusion to those republics, and to act contrary to our advice. There is no doubt that Greece and Rome, in their best days, produced men remarkable for good conduct and for noble achievements. In these republics, however, public opinion (such as we have defined it) did not exist; many of its requisites were wanting. Yet in those communities, something resembling public opinion, which might be styled public approbation, was in existence, and was highly valued. It was this feeling of value for the approbation of their fellow-citizens, that occasioned the various acts of heroism and self-devotion to be remarked in those days. The moment these republics ceased to exist, and had lost the power of conferring the public approbation, either by becoming subject to the control of a despot, or by the

which was more likely to be found amongst them, than public opinion, such as we have defined it*.

In what has been said concerning public opinion, no allusion is made to any of the means by which information is spread throughout the community, which means, of late years, have been much augmented and rendered more general, such as the improved systems of education, the facility with which every sort of information is distributed in every direction, by means of

loss of their civilization; when by sinking into barbarism this public approbation was lost, the actions performed and recorded in happier and more enlightened times ceased. This would confirm the impression that the general good opinion of our fellow-citizens is, perhaps, the sweetest reward that can be obtained for public exertion, and acts upon and influences the human mind in proportion as civilization and general information are prevalent in a community.

* Where public opinion exists and is powerful in a free country like Great Britain, a sort of public approbation, which, however, merges into public opinion, will exist. Sir William Jones observes (Letter to Lord A., vol. i. 8vo. ed.) that a man, to attain the greatest respectability in England, must be possessed of virtue, wealth, and power of public speaking. This assertion, supposing it to be correct, and there seems no reason to doubt it, shews to what a point public opinion must have reached in this country.

It is impossible to agree with the following assertion of the learned author of the *Vindiciæ Gallicæ*, when he says, "The public voice, irresistible in a period of convulsion, is contemned with impunity when dictated by that lethargy into which nations are lulled by the tranquil course of their ordinary affairs. No hope of great political improvement is to be entertained from tranquillity, for its natural operation is to strengthen all those who are interested in perpetrating abuse." This is far from being the case; let any one look at any country in Europe, and they must perceive that tranquillity produces wealth, which produces the middle class of society, which promotes and strengthens public opinion.

the press *; these come under the head of information and civilization, which are also very much assisted by facility of communication.

Unless information is spread through a nation, it is evident that there is ignorance; if ignorance exists, public opinion, which is founded in a great measure on the information of the community, cannot be found. If a proper sense of religion, which is manifested in a people by the moral principle, does not exist, the true link of the chain that binds man to man, and secures the welfare of the community, and promotes the cause of individual security and public liberty, will be wanting. Assemblies of men, and even communities, may be, and often are, influenced by their passions, by their interest, by their enthusiasm; but the real and proper sentiment on any given question that ought to influence the greater part of the well informed in any country, to be styled public opinion, must be founded on the basis of moral principle and general information. That degree of knowledge acquired, not only by education, but by the intelligence obtained from various quarters when applied to the people, as one of the requisites for the formation of public opinion, comes under the appellation of general information.

Facility of communication, one of the other requisites

* To dwell on the powerful and irresistible manner of conveying information by means of the press, and of the immense influence it has in promoting the formation of public opinion, would be useless; it must be evident to every one that, by this means, the information and almost the civilization of the community is established.

for public opinion, is the ease and celerity with which people of the same or of different countries may have communication with each other, either by roads, or by canals, steam-boats at sea, &c. &c.; in short, by any method that renders the intercourse cheap, easy, and expeditious. The advantage of this facility of communication to the formation and strength of public opinion, arises from these causes; it enlightens the people, destroys prejudices, local customs, and habits, promotes intelligence, assists in spreading general information, and facilitates considerably the interchange of commodities and commerce: this facility of communication, like the other requisites for public opinion, increases the wealth of the community and the middle class of society, and is, in its turn, extended by their increase*.

* It is scarcely necessary to dwell on the extraordinary change that has, of late years, taken place in the facility of communication. The late improvements in roads, and the use of steam machinery in vessels, have much encouraged this facility of communication: as the means and the ease of intercourse will, in all probability, yearly increase, this alone would have a tendency to civilize mankind, and to encourage the formation of public opinion; but added to the other causes, and working jointly with them the effect produced is great indeed. Let any one who is not fully sensible of this, open a magazine or look at a paper, and observe the difficulty and delay that existed sixty or seventy years ago in procuring intelligence, and the little intercourse that existed in those days; let him compare the case of communication as it then existed, with the ease and celerity that is experienced at present, even in so short a time, and the change will be found great beyond what could be expected. The additional wealth created in this country has also much contributed to this, as well as the increase of the middle class.

We may therefore say, that facility of communication assists, in a powerful manner, the progress of public opinion, promotes intelligence, and assists considerably the ease of acquiring information in an uneducated population. Facility of communication is promoted by civilization and wealth, and, in its turn, augments them. It follows, therefore, that whatever discovery or improvement brings about the interchange of commodities, or the facility of conveyance, disseminates information and augments civilization, and the strength of public opinion *.

Having stated our definition of public opinion, and enumerated its requisites, the next step will be to give an outline of what is attempted to be proved, which is as follows.

In a civilized country where public opinion (such as it has already been defined) exists, the form of the government and its measures depend on public opinion, and are governed by it; always, of course, taking it for

* How many spots are to be found, even in England, which were nearly secluded, until, by improvement of the roads, the making of new ones, the establishment of water conveyances, or those of some other description, facilitate the approach towards such place, or through it. In such a place, although public opinion may be feeble at first, yet after the results mentioned have taken place, it becomes stronger than it was formerly. It is not intended to convey the impression, that such advantages are gained with some concomitant evil, but the aggregate of benefits will exceed that of disadvantages: the same remark will extend to any other place. Such communication divests mankind of those prejudices, formed and encouraged by ignorance and seclusion. It lessens all feelings of dislike to difference of dress, manners, country, or even colour. In short, it may be said that, in the civilization of Europe, and of the world, that is fast taking place, more importance and influence may be attributed to facility of communication, than at first sight it would appear to merit.

granted, that the country is not held in subjection by a foreign force.

The manner in which it will be attempted to prove this position, will be to take a summary review of the history of England, and to observe how far public opinion and liberty have increased together. If it appears that since the dawn of public opinion in this country, in proportion as it has increased, the form of government has become more popular and liberal, sometimes with struggles and convulsions, as in the reign of Charles I., and of later years by more gentle and easy, although equally effectual means, as in the calling of the Prince of Orange in 1688, and of the House of Brunswick at a later period. If it appears that the same holds, and has held invariably in all parts of the world, which is, that, where public opinion has increased, liberty and freedom have always augmented in the same proportion, the principle itself may be adopted as true.

As we proceed, we mean to take also a summary review of all the leading countries, besides our own; and if we invariably find the same results arising from the same cause, either in small republican states or in great kingdoms, that in the same proportion in which public opinion has increased, so has the government become popular, and its acts liberal,—if such can be shewn to be the case in every instance that can be adduced; if the reverse also is invariably the case, that is, in proportion as a people are ignorant and barbarous, their government is arbitrary,—it will not, we trust, be hazarding too much, or shew that we are too hasty in our conclusion, if we lay it down as a general rule.

We hope not to be misunderstood, or that we can for an instant be supposed desirous to advocate the cause of bad governments, or to inculcate any doctrine tending to support them. There seems to be a prevalent error in imagining that, in a civilized country, the government can command public opinion; this is far from being the case. A government, we repeat it, in a country where public opinion is powerful, must be directed by such public opinion, and follow its dictates *.

Whether a despotic government can prevent the growth of public opinion or not, seems doubtful. It can check civilization by prohibiting commerce and manufactures; by rendering the tenure of property insecure; by preventing facility of communication, and by substituting superstition and bigotry for moral principle, and religious feeling and ignorance for civilization. All

* Let us for example suppose, that the despotism of Turkey was at this moment established in England. It is clear to a demonstration, that it would not be tolerated by the people, and could only be supported by an overpowering foreign force. Suppose that the English constitution was established to-morrow at Constantinople, it is nearly equally certain that it would not continue. The heads of half the representative part of the legislative would some day be taken off, the rest bastinadoed and turned out of doors, and despotism would be re-established; there would be no public opinion to support a free government, no middle class, no information, nothing but an ignorant and fanatical lower class, easily led by popular clamour, or influenced by some active leader, or favourite of the mob or army. But supposing the Turks to give up their superstition and their ignorance, to become civilized, to be possessed of information, of moral principle, of facility of communication, and, as a result of all these, to have a large middle class of society, created by wealth and industry, then would public opinion have its influence, and despotism would fall.

this certainly may be done to a certain extent, by a despot having the unlimited control over an ignorant population; but then the difficulty is, that, by such steps, (as wealth and civilization is now power and political importance,) the despot renders his people weaker in relation to the neighbouring states, and in point of wealth, power, and political importance, a mere nullity. Although a despotic government, therefore, can, by arbitrary acts, prevent the growth or dawn of civilization, yet should, by any circumstance, civilization, in such a country, reach to a certain point, and public opinion be thereby created, then despotism is at an end *. It may, we think, be said,—that in whatever country there is a small middle class in proportion to the lower class, little moral principle, and, consequently, little civilization, public opinion cannot have much weight; and a free and representative government can scarcely be able to preserve its existence, as its influence

* Let us for a moment imagine that the despotic government of a country should entertain the insane idea of preventing the dawn of civilization and of public opinion from appearing, and to carry this into effect, was to take the most effectual means for checking the production of wealth, by forbidding the use of machinery, the facility of communication and of commerce amongst the people and with other nations. Such a nation, it is evident, would not be like its neighbours, and would remain poor and powerless; whilst the others augmented their capital and their middle class of society. Such an attempt, however, could scarcely be made by any government in the present day, unless aided by a lower class equally ignorant and fanatical with that in Turkey. At present, such an attempt could not be made but indirectly, by prohibitions or heavy duties, &c. &c., not by absolute restriction, which would be too evident to any people in these days.

and power depend on the extent of public opinion, and on the relative proportions of the upper, and more especially the middle, classes of society.

It does not appear that public opinion can exist in any community without the requisites that have been enumerated, and to render its power complete, they must all exist to a certain degree. Civilization alone, in a people without a proper religious feeling or moral principle, would not constitute public opinion *. If facility of communication were wanting in a community, it would be difficult to find public opinion powerful, which, although it might and naturally would, on any subject, be felt by the community as strongly if they possessed all the requisites for it and facility of communication; yet, if this last were wanting, public opinion would lose one of its most powerful attributes, which is the knowledge that such a sentiment was general throughout the community. Not to be further tedious on this subject, it will suffice to mention, that if any of the requisites already mentioned, as necessary to the formation of public opinion, are thought by any one not

* This can be observed in many instances. We do not approve, as we have said, examples taken from the ancients; yet, in this instance, if we might be allowed to take one, we should refer to the Grecian republics, and to the days of Rome under the Cæsars; in more modern periods to the Venetian and Genoese republics, to the time of Louis XIV., in France, and even at a later period: in none of those countries, at the time mentioned, did public opinion exist. Although civilization had made considerable property, there was little moral principle, general information, or facility of communication, and, consequently, nothing like what we have defined to be public opinion was then to be found.

essentially requisite, let him only reflect on the state of a country where public opinion was in existence without such a requisite, and it will be found that, in such a case, public opinion could scarcely have influence.

It seems, therefore, that public opinion cannot be found in a community without its having advanced to a certain point in the accumulation of capital, sufficient to create a certain proportion of the upper and middle classes of society.

Those tribes of North American savages, or wandering Indians, found in various parts of the globe, who support themselves by hunting, or by the chance produce of the earth, are the people that may be said to be the poorest, that live in the state of greatest destitution, and whose privations and hardships must, of course, be greater than can be felt in the next state, which is that of pastoral nations, whose property consists entirely in their flocks, who form a sort of wandering community, like the Arabs of the desert, that migrate from place to place in search of pasture for their herds, or water for their use, without any settled property in land, or habits of tillage. Such a community must, of course, from their mode of life, suffer privations; but possessed of their flocks, they have some resource, are more civilized, and suffer much less than the former. After these may be mentioned the agricultural community, who are sufficiently civilized to cultivate the earth, and who can support themselves by regular crops, &c., &c., for which they labour and are rewarded. These, it is evident, are in a superior state of civiliza-

tion, and are possessed of more property than the former; however, such a community so far civilized as only to till the land and raise the produce of the soil, would, without commerce or manufactures, or other industry, be possessed of little capital. Having no demand for the produce of the land further than what might be required to answer and to supply their own wants, they would confine themselves to the raising of what was just sufficient for their own consumption. The produce of one year would probably prove enough to supply the demand, or according to the productiveness of the season, or its deficiency, be a little above, or a little under the general wants of the community. In such a state of things, it is evident no superabundant capital would be created, and at the end of a given time, say a century, or any other period, the people would be nearly in the same situation as at its commencement; the yearly produce would be consumed, and little or no capital would remain. In none of these states (the agricultural included,) in Europe, was there any thing like a middle class of society *, no additional capital being created,

* In the savage state, it is evident no middle class would be found. In the pastoral state, there would in general be an upper class, that is, the proprietors of the flocks; the rest might consist of their followers or dependants, and in such a state no middle class would be in existence. In the agricultural country, such a country, if in Europe, having, in general, been conquered by some warlike tribe, the land would be found chiefly possessed by an upper class and by the church, without a middle class; as in England, after the conquest by William; and before the reformation, in Russia, in Poland, &c. &c. This observation of course would not hold in a country colonized by a civilized people, which, from its

the population might increase, but the proportion of the several classes of society with regard to each other would remain the same; that is, an upper and an immense lower class of society would be found. In such a state might nations continue for centuries, without a middle class, without facility of communication, or any of the other requisites for the formation of public opinion. Such was the situation of England some centuries ago; such is the present state of some countries on the continent of Europe. Now, supposing that, in a country so circumstanced, the means or the power of manufacturing articles of any description were introduced, that commerce was established, in short, that an interchange of commodities took place with other countries, it is evident that, in a given time, (say a century,) a quantity of capital is created (and therefore a middle class) proportionate to the industry, the extent of commerce, the manufactures, and the other means of creating wealth, possessed by this community*.

nature, would at once be subdivided, and form a middle class, as in the United States of America, New Holland, &c. &c. An exception, perhaps, of the European states, ought to be made with regard to Switzerland, a country chiefly agricultural, where, however, no feudal system was formed, and where a middle class seems to have existed merely from agriculture.

* The manufactures and commerce of one country, not only stimulate and augment the industry of any other nation with whom there is communication, but it also follows that the individuals of the countries where such traffic is carried on become more active and more industrious, as new wants and wishes are excited, that can only be gratified by exertion. Where no articles of luxury or domestic comfort are to be obtained, the labourer may, perhaps, be

It may be imagined by some, that, in these observations, too much stress is laid on public opinion, and on the extent and information, and influence of the middle class of society, and, also, that sufficient allowance is not made for the prejudices of nations, and for feelings of bigotry or superstition that may still be found amongst them. With such an opinion we cannot agree: there is no doubt that nations or communities may be swayed by prejudices, may be influenced by bigoted or superstitious ideas; but these can only be found where there still exists a certain degree of ignorance and want of civilization. Wherever these are to be found, they disappear before proper religious feeling, information, and civilization, as mists before the rising sun. Let any one look at a civilized and well-informed community, possessed of moral principles; little or no bigotry will be found amongst them.

To enter into a detailed account of the degrees of superstition, which at various times have filled the minds of men in different ages and different countries, would be quite useless; it will be always found amongst mankind, to be in proportion to the extent of ignorance, and want of proper religious feeling. On taking an enlarged view of the subject, it appears that, as civiliza-

satisfied to obtain for himself and family the bare necessaries of life: if, however, some little luxury or comfort can be acquired by an hour's additional labour, he may, and probably will, feel desirous to obtain it; the consequence is an additional stimulus given to individual exertion, and the desire in individuals to improve their situation, a feeling to which the wealth of a country chiefly owes its existence.

tion and proper religious feeling advance, superstition and bigotry disappear. Such being the case, both time and trouble is saved by looking at the effect of these causes on a general principle, rather than by attending to any partial effects which those of an opposite tendency may have had on the minds of men.

The invention, improvement, and general use of machinery, has, it is evident, a direct tendency to augment the power of public opinion by creating capital, augmenting the middle class, promoting information and facility of communication, which, as we have said, when supported by proper religious feeling form public opinion.

In former times, the increase of capital, even supposing some activity to prevail, and, consequently, the augmentation of civilization, and the creation of the middle class, could only increase in an arithmetical proportion at most; whereas, since the introduction and use of machinery, the increase may be said to be in a geometrical ratio: the same of public opinion.*

* Facility of communication is of considerable importance in cementing public opinion, and in giving it a power and influence that it might not otherwise possess. Of what service to the community would the best sentiment on any given subject prove, or the best written book, if neither could be made known, if neither could extend beyond the place where they first originated. In the present day an opinion, by being printed and disseminated, can with ease be "wafted from Indus to the Pole," and pour out the best feelings and best sentiments of the human mind, in a thousand different channels. Facility of communication, moreover, promotes the adoption of a discovery or improvement. But it is unnecessary to dwell on advantages that are obvious.

There seems no probability, that the influence of public opinion will remain stationary in those countries where it has already become manifest, or that it will not show itself even in others, where, at the present moment, such a sentiment is scarcely known.

That public opinion must increase in power where now it exists, seems clear when it is considered how much capital, when once created, has a tendency to augment: as capital augments, the middle class of society increases in the same proportion, and this effect would take place, even if all improvement in machinery, and the use of it, were to remain stationary. Such an operation would naturally follow from the power of augmentation almost inherent in capital of every description; but when the almost daily increase of the use of machinery, together with the improvements and inventions that are constantly making, are taken also into the account, it is clear to a demonstration, that, in such a case, capital, and consequently civilization, the middle class of society, and the power of public opinion, must increase in such a country (England for example) beyond the bounds of any determinable limit.

In those nations, even where the greatest ignorance and want of the middle classes is to be found, it seems probable that, at some period or another, and that, perhaps, not far distant, commerce, manufactures, or the assistance of machinery, will be called in; and in such a case, the creation of capital follows almost as a matter of course. Let us imagine, for example, a country in which there is to be found a

small upper class of society, and an immense lower class, utterly ignorant; and, as is usually the case, the latter the slaves or dependants of the former; the whole under a despotic government. Although such a country may be extensive and populous, yet its influence and power must in some measure depend on the revenue that the government can squeeze out of the people: it is evident, if the people are poor, little can be obtained from them, and such a government can have but little influence or power on other nations, not, perhaps, so numerous, but possessed of more capital and greater credit and resources*. It follows, therefore, that the despotic government, although, probably, adverse to improvement on principle, may be obliged to tolerate, even to encourage, the creation of capital, by permitting the use of machinery, the export of commodities; in short, in allowing its subjects to exert their industry to create capital, and, consequently, to lay the founda-

* Since the invention of gunpowder, the system of warfare is entirely changed. In ancient times we find the Goths and Vandals overrunning Italy, the Turks conquering Greece; in short, the most ferocious and barbarous people overcoming those more civilized, by dint of numbers and courage. Since gunpowder has been in use, an entire revolution in warfare has occurred; that nation, which has the best served artillery, the best mounted and best formed armies, sufficient magazines, &c. &c., is, *cæteris paribus*, the most likely to obtain victory. In short, capital or credit, which is the same thing in this case, are absolutely necessary; and that country is most likely to be powerful and to emerge successfully from a contest with another, that has the greatest abundance of capital, provided there exists any thing like an equality in other respects. It follows, therefore, that, in war, that nation where public opinion has influence, is more powerful than another of equal extent and population, where such public opinion does not exist.

tion for a middle class of society, and for the formation of public opinion, which, as it gains strength, will gradually root out the despotic government, and encourage, in its stead, a more liberal and enlightened one. If we cast our eyes to the north, or to the south of Europe, it is difficult not to perceive that such a result must some day follow the common exertion of that industry and activity so natural to man. Even supposing a despotic government to be fully aware that this result must inevitably take place, it seems scarcely possible, that any means, devised by the ingenuity of man, could check such a result. So anxious does a despot feel at all times to increase his influence, and to enjoy luxuries by means of money, that he would be anxious for the present, regardless of the future, and might encourage the activity and industry of his people from that cause alone. What is here said regarding those countries that are most barbarous and ignorant may not follow immediately, and will, perhaps, require time to bring it about. A superabundant capital, and an extensive middle class, are not created at once; but sooner or later, such a result may be expected to take place*, and this may occur even in less time than might at first seem probable.

* Even in Turkey such an event may occur, not however in the present day. The feeling of bigotry, and that inclination to idleness so prevalent amongst barbarous and ignorant nations, may counteract the creation of capital for some time; but by degrees, as this last increases, even in a trifling degree, the other two will diminish in the same proportion; although, to eradicate these two powerful feelings amongst the Turks will be a work of time, and at first of difficulty: but it must be recollected, that when once civilization takes hold, it shoots in a surprising manner.

Chapter I.

§ 1.

To explain the rise and progress of public opinion in England, it will be necessary to take a summary review of our history from the dissolution of the Heptarchy to the present time, to separate this into different periods, and to attempt to ascertain the state of public opinion (if any existed) in each period.

1. From the conquest to the restoration in 1660.
2. From the restoration to the revolution in 1688.
3. From the last-mentioned period to the accession of George I.
4. From the accession of George I., to the death of George II.
5. From the commencement of the reign of George III., to the present time.

In the consideration of these several periods, it will be found invariably, that, in proportion as the intelligence, wealth, civilization, middle classes of society, or in other words, as public opinion has increased, the form of government has invariably become more mild, liberal, enlightened and free: certainly it must be allowed, that the change in the religion of the country at the Reformation was highly important: but then this arose, in a great measure, from the increase of the middle class, and the state of information that existed; although of course,

when the reformation was effected, it facilitated and encouraged, in its turn, the increase of every description of industry, and therefore the increase of civilization and public opinion. The investigation of public opinion ought, for many reasons, to begin with a consideration of that sentiment in England, in preference to any other part of Europe, not only because it is our native country, but because it was the first state of consequence in Europe, where public opinion made its appearance and was declared; for although some small republics, either in the Mediterranean or elsewhere, had, from a particular combination of causes, chiefly their activity and wealth, created by commercial enterprise, something resembling a free government and a middle class of society, yet they were on too small a scale, and too quickly swallowed up by the great powers in their neighbourhood, to afford sufficient time for a clear investigation, or an accurate delineation of the rise of public opinion. In England, the dawn and formation, and subsequent growth of public opinion may be traced; no foreign aggression having occurred during the period above alluded to, that could interrupt the march of civilization or the gradual increase of the requisites for public opinion already named, and defined in the introduction to these observations.

It will be seen that, in the period of the civil war under Charles I., and the contest between that monarch and parliament, we attribute, in a great measure, his downfal to the state of public opinion being against him; from the circumstance that the middle class of that

day, and those who had acquired wealth, and were entitled to more consideration, did not find it from that sovereign or his court. In this assertion, however, we mean to state what, in our opinion, was the leading cause of the revolution; there might, and there probably did, exist minor causes, that influenced the nation. It may be said, and with truth, that if the reformation had not taken place previously to that period, the king would have been supported on the throne by the lower class influenced by the clergy. This is undoubtedly true; but what occasioned the reformation in England?—the same cause that created public opinion: that is, general information, proper religious feeling, civilization, &c., spreading through the community; so that, in fact, the same cause that brought about the reformation, brought about the opposition made by parliament to the unlimited prerogative of the crown; the reformation was, therefore, the effect of this improvement; and so was the first opposition of parliament to Charles I. We think it best, therefore, to go at once to the leading causes, not to judge by their partial effects, but by their result on the people at large.

It appears that England, like most other countries, had, in days of ignorance, been subject both to conquests and internal commotions. The last conquest, about eight hundred years ago, was the occasion of establishing the feudal system, which seems to have been a sort of compact between the conqueror, his followers, and the church: that is, the followers formed an upper class, to whom was given or belonged nearly the whole landed

property of the country, on certain conditions; these in return supported on the throne the family of the individual from whom they received their possessions. The church, in those days, possessed of considerable power, supported both, and in return was supported and rendered more powerful by them: the mass of the natives formed the lower class. In those days, in England, as well as in most countries in Europe where conquest established the feudal system, scarcely was a middle class in existence. If individuals, not more numerous than the upper class, were found who might be included in the middle class, their numbers were not sufficiently great, and their ignorance was such as to render them of no importance whatever, which is usually the case where a middle class is not numerous, and ignorant. What renders the middle class at present so powerful in England, is, more than any other circumstance, the mass of property of which in the aggregate they are possessed, superior in a great proportion to all the other property in the community: when, to the influence belonging to property, is added the activity and information now so general in England, the extraordinary power of public opinion and its influence will cease to be a subject of surprise.

In the accounts received from historians of former times, one may in general assume that sufficient allowance is not made by them for the state of ignorance and of barbarism that was prevalent in those days. At the time of the conquest, and for a considerable period after, it seems that England was entirely under

the control of a sovereign who ruled in nearly as despotic a manner as the Sultan in Turkey. The gradual dawn of public opinion will be perceived to arise in those places where a middle class was created by manufactures or commerce, and where, consequently, the requisites for public opinion could be produced. The moment that the inhabitants of any town or city had by these means obtained a certain degree of capital and some of the requisites of public opinion, we find them invariably desirous to secure their persons and property by certain privileges, charters, &c. &c., which, by some means or other, they generally obtained from the crown. Their capital, and the several requisites for the formation of public opinion, were certainly much weaker than at present, indeed some scarcely existed. How was it possible to render information general amongst those persons, even of the middle class, before printing was invented; and even if it had been in existence, the want of facility of communication *, and, consequently, the difficulty of spreading information was so great, that the few requisites that did exist were in a weak state: yet, however, such is the innate love for independence and security of property, that we find, in the early days of civilization in England, certain privileges obtained by commercial and manufacturing towns. On the same principle, and exactly for the same reason, one may observe the same occurrence and the same results in other parts of Europe †, and

* From want of conveyances, badness, or non-existence of roads, danger of travelling, &c. &c.

† Such as the Hanse Towns, the republics of Venice, Genoa, &c. &c

everywhere, in whatever place, some pursuit of industry or commercial activity; or other cause, creates capital. This capital, in subdividing, forms a middle class, which being possessed of a proper religious feeling, information, civilization, and facility of communication, establishes public opinion,—a sentiment that is always turned towards liberty and security of persons and property.

In all probability, the conquest of England by William the Norman retarded the rise of public opinion for some centuries, in consequence of the division of land made by the conqueror, which was in accordance with the feudal system regularly adopted by most sovereigns in Europe, to secure themselves and their descendants on the throne. The system seems to have been, to parcel out nearly all the land of the country amongst their followers which formed the upper class, leaving the rest, consisting probably of those indigenous to the soil, to form the lower class; which last being kept in a state of profound ignorance, were easily influenced by the church, which, in the days of popery, always had great power, both from their possessions and their spiritual influence, assisted by the crown and the upper class. A nation, so circumstanced, could, by no possibility, emerge from such a state, and form a middle class and the requisites for public opinion, as the produce created from agriculture, which was little or nothing of capital, was, of course, consumed almost as soon as created. Thus no commerce, no manufactures, no industry, beyond the mere cultivation of the land and the providing of absolute necessaries, existed in the country

in former times. Unless, therefore, a middle class had existed by the possession of moderate portions of land, it could scarcely rise into existence *. In those days, therefore, the towns had not acquired a sufficient degree of wealth to desire or to obtain those charters and immunities, for which, at a subsequent period, they were so eager †.

The upper class then consisted of those barons chiefly solicitous to be distinguished by their bravery and martial achievements, and of courtiers anxious to obtain the approbation or the boons at the disposal of the monarch. Although this upper class was ignorant in the

* It may not be improper to observe, that, as in most countries of Europe, the conquest of the land enabled the sovereign to portion it amongst his followers or dependants, who, in return, gave him, when required, military service with their vassals, villains, &c. &c.: these feudal lords, therefore, with the lower class, formed the nation. In states colonized by a civilized people, or in wild lands cultivated, the same is not the case, as land, instead of being assigned by the conqueror to one proprietor, is assigned only to those who can purchase or cultivate what they obtain: instead of one great proprietor, therefore, several small ones are formed; and in such a state, an extensive middle class rises up in a short time, and the lower class is much less numerous in proportion. This difference between the classes in one country and another, is of considerable importance, as we shall see hereafter, to the formation of the requisites for the formation of public opinion; and renders it more powerful, at this moment, in the United States of North America, than in some kingdoms on the continent of Europe.

† It must not be omitted that as, in those days, the poor were not assisted by any poor's laws, they relied wholly on the bounty and charitable donations of the monasteries and other church establishments. In those days, little or no rent was obtained from the land; the proprietor gave produce instead of money to the poor: this produce could necessarily be expended in no other manner than in supporting those of the lower class in want of such assistance.

extreme, yet they were upheld by their possessions, their union with the king, and the ignorance of the lower class, over whom the church, by means of the priests and the benefactions given, possessed very great influence. Nearly the whole of the landed property of the kingdom belonged to the feudal lords and the church, who, between them, divided this country. The produce of the lands of the barons was employed in supporting their retainers, who lived on their bounty in times of peace, and followed them to war when their services were required *. Although these feudal lords were illiterate and ignorant in the extreme, yet they were probably superior in education and intelligence to their villains and bondsmen, who existed in a state of ignorance and barbarism, of which one can, in the present day, scarcely form an idea. There seems to have been no settled plan of state policy. Wars were then undertaken, not from any political consideration, or to ensure any important advantage to the nation, but from the most contemptible or the worst motives imaginable. Sometimes, in consequence of court intrigues; sometimes, to find occupation for the savage and restless spirit of the nobles; but probably more commonly for the purpose of enabling the ruling power to obtain the command of a military force, or to obtain extraordinary subsidies or supplies from the nation.

* That love of war so common and so remarkable in those days, originated, probably, not merely from an ardent feeling for military renown and glory, but from the love of plunder and the facility that it gave to a baron with a large number of followers to support them at free quarters on the country, when unable or unwilling to support them at home.

Sometimes predatory excursions (for which England was well situated) were undertaken, for the purpose of collecting booty, and harassing the enemy. This is exemplified in the various expeditions to France, so often attempted, and at such different periods.

It is quite evident, as we have already said, that for a considerable time after the conquest, nothing like public opinion (such as it has been defined) existed in England.

§ 2.

The conference of the English barons with King John (A.D. 1215), in which they obtained from him the ratification of Magna Charta, seems to shew the fears entertained by those barons of that tyrant's cruel and perfidious disposition, which united them together, and induced them to exact some security from him for his future conduct; but it does not appear from the events that followed the meeting at Runnymede, that much was gained at that time by the concessions extorted from King John, and it was scarcely possible for any great advantage to follow. No information or middle class existed then in country; subsequently, however, "Magna Charta," as a sort of foundation for the structure of the constitution, proved of considerable service to succeeding generations*.

* The grant of Magna Charta from King John to his barons, shews that the latter were desirous to obtain some sort of protection for themselves and successors from the power of the king. The same sort of desire has probably actuated the upper class

The assembly of barons, ecclesiastics, and commons, (at that time the latter were only representatives of the lower class,) that was summoned by the Earl of Leicester, under Henry III., did not much resemble what at present is understood by the word parliament, and proved then also of little service*.

from the most ignorant times to the present. Such boons, however, given to a people nearly barbarous, with a moderate upper class, scarcely any middle class, and an extensive lower class, all which were totally uninformed, and destitute of the requisites for the formation of public opinion, was not likely to prove of much service, except as a sort of precedent to be followed in future. It is, however, an important instrument in itself, not only as it evinces the desire of some in England, even in those days, to secure their independence, and to obtain concessions from the monarch, but as a standard in all future ages for those desirous of securing their liberty. After the charter had been granted and ratified by John, it does not appear that either that monarch or his successors were less arbitrary or less tenacious of their prerogative.

* At that period, if the constitution had been established as it was in 1688, if the Bill of Rights, the Habeas Corpus, and all the other safeguards of liberty had been in existence, there is little probability that they would have continued any time; and if they had by some chance remained in existence, it is quite certain they would either have been disregarded or have proved of no service. Civilization, then, had made little progress, and the middle class of society did not exist; and whatever inclination there might be amongst a few well-intentioned and worthy men to secure these blessings, it is evident that, with a rude, unlettered upper class, no middle class, and a barbarous lower class, the power of the king, or of the nobles, assisted by the church, must always have proved too great, to secure the due administration of any law, or the security of any one to whom the existing government was hostile.

The barons and ecclesiastics, in the assembly above alluded to, did not in any manner represent the people: the barons attended on their own behalf, and the others attended to represent, or rather to preserve and augment, their own interests, and the rights of the church. As to the lower class, the remaining part of the nation, they

The only manner in which such an assembly could be considered useful, was in the same manner as it has been said that Magna Charta might be, by giving, not only to posterity, but also to those persons in the country sufficiently enlightened, a rude sort of notion of meeting together, and of forming a constituted assembly, which represented or secured the rights of the people.

The commons assembled at this time could only be considered as the representatives of the lower class, from the circumstance that it was not until a much later period that a middle class was in existence*. At this

were looked on as nothing, and were, in fact, the bondmen of the barons, or the church, and, therefore, could not be considered as possessed of any separate interests. When a middle class began to be created in towns, by associations for manufacture or commerce, of course a change began to take place; but it was long after this period.

* The commons who were summoned, and who attended on those occasions, did not probably possess even that rude sort of education which, in those days, was bestowed on those intended for the church; they were, certainly, not the country gentlemen of these times.

The manner in which the house of commons was first established, seems to shew that our ancestors gave more attention to the influence of cities and boroughs than has been given of late years. It is quite clear that the individuals who were sent by those places were intended to represent the commercial, manufacturing, and monied interests of the country. Now these have increased, perhaps, one thousand fold since those days; yet the number of the members for towns has not, for upwards of a century, been augmented: whilst, from a depreciation in the value of money, the freeholders in counties have been extended. Taking, therefore, the same proportion, it would seem that the commercial, manufacturing, and monied interests in the community are not so much repre-

period it cannot be said that any civilization or middle class existed in the country. There seems, therefore, little for us to notice further, concerning those days, likely to illustrate the subject. The wars of the Roses, and the rival claims of the houses of York and Lancaster, kept the people in a state of agitation, and by rendering property and the fruits of industry insecure, thereby prevented improvement, industry, civilization, and the progress of public opinion, by keeping back the requisites for its formation, without which no nations can grow into civilized society.

§ 3.

It was not until the reign of Henry VIII., that a perceptible change took place, and the state of the people became ameliorated.

This change arose from the long and profound peace the nation enjoyed under Henry VII., from the permission granted by that politic prince to the great landholders to alienate their estates. The long period of peace encouraged habits of industry and commercial activity amongst all classes, which occasioned the creation of capital, and the activity of the people, by producing objects of comfort or luxury, which augmented the inclination* of the landed propri-

sented, considering their increase, as they formerly were in parliament.

* It is evident that where nothing was to be obtained beyond subsistence and clothing, the landed proprietor of those days had little temptation to distress his fortune by extending his expenditure

tors to increase their expenditure, and, consequently, encouraged them to part with their property by sale, and thereby tended to create a middle class of society. It must also be remembered, that the suppression of the monasteries, and of the abbey lands, and the spoliation of the church by Henry VIII., in the course of his reign, occasioned a distribution of land, which had a similar tendency, as will appear from the following events.

During the period to which we are alluding, it is probable that some improvement might have taken place in the civilization and information of the people; but it was so slight as not to be perceptible by any particular events, at this distance of time.

The seeds of a very considerable change were laid in the reign of Henry VII., which took place as follows:

This prince, and his advisers, were both jealous and afraid of the power of the barons; and although the most turbulent and factious had perished in the wars of the Roses, and in the subsequent battle that placed him on the throne, yet it was evident that the successors to their estates would inherit their power, and that, sooner or later, they might feel inclined to renew the civil wars. In order, therefore, to secure to himself and to his de-

beyond his means, as the surplus could only be spent on others, or in acts of charity. But the case was different when articles of luxury were introduced; then the whole expenditure of a proprietor might be expended on himself, and the inclination to exceed was, of course, greater. Then it was that the legislature supported the courts of justice in the fiction of fines and recoveries, and the consequent cutting off of entails: the alienation of the large estates, in many cases, followed as a matter of course.

scendants, undisturbed possession of the throne, and to avoid internal dissensions, he resolved to lessen their influence and curb their power, which was to be done most effectually, by permitting those, so inclined, to alienate their property. To bring this about, however, it was necessary to alter the law of entails, or to lessen its force. This was no easy matter, as the barons were aware of the chance of civil wars, and of the risk thereby incurred of losing their estates, always, as a body, felt partial to the law of entails; and if a legislative enactment to that effect had been proposed, might have opposed it, or, at least, might have suspected the motive of the monarch in such an attempt, which would have proved a bar to his plans. To aid this plan, the courts of law lent their powerful assistance, and by their connivance, the fiction was adopted of levying fines and suffering recoveries, for the purpose of cutting off the further extension of the entail: then the proprietors of estates found themselves gradually relieved from the operation of the law, and soon availed themselves of the power lately acquired, of alienating their property. At that time, the estates of the barons were, in general, far more extensive than at any subsequent period; and by this system of alienation they became gradually less, as when alienated they usually were subdivided, and purchased by individuals more in number than those who sold. Such an operation had a tendency to the formation of a middle class *. At this

* By this permission to alienate, granted to the great landholders, a double advantage was gained at that time to strengthen the influence of the crown. One was the lessening of the property of the

period, (the reign of Henry VII.) the nation enjoyed peace abroad, and tolerable quiet at home; and in a slight degree commerce and manufactures began to be encouraged, or rather adopted by the people, and consequently a small quantity of wealth or disposable capital was obtained; which although, at that time, personal property was scarcely understood or known, enabled a few who had created capital, to purchase land, or, in other words, to form the commencement of a middle class of society. As the industry of the people increased, articles of luxury, such as they were esteemed in those days, were produced; and the consequence was, that the barons who had no means of expending their revenues, slight as they were, beyond the power of supporting a number of retainers in their castles, felt inclined to dwell in the metropolis, and to expend whatever incomes they could command in those articles of luxury, and in such enjoyments of civilized society as were to be found; although, of course, at that time,

upper class; the only class at that time that could in any manner oppose the royal prerogative, as no middle class was in existence. The other was, that the barons felt unwilling, hastily, to enter into a civil war, aware that their estates might be forfeited or lost to their descendants, as they could no longer be protected by the strictness of the entails: thus it appears, that formerly the sovereigns, to secure themselves on the throne, encouraged the feudal system. When, from the turbulence of the barons, and the frequent civil wars, they found this system dangerous, they exerted themselves to lessen the influence of this upper class, by diminishing their property, and thereby unwittingly promoted the formation of the middle class and of civilization; which, however, must have advanced under almost any circumstances, and ultimately spread throughout the country.

very limited. The production of these articles of luxury by some, and their consumption by others, naturally produced an expenditure, and a change of property. Thus, by imperceptible degrees, a new order of society, the middle class, began to make its appearance.

The English are naturally industrious, prone to labour and exertion. Although, at this time, the state of commerce and manufactures was trifling in the extreme, when compared to what it may be at present, yet there was enough to form, by degrees, something like a middle class, or, at least, to assist in the alienation of the large estates. It is evident, that if no manufactures or commerce were in existence, it would be nearly impossible for large proprietors to dispose of their lands, even if they were forced to do so by an expenditure beyond their income, as it seems difficult to imagine whence the capital could be produced, without the above requisites to procure a purchaser: nor would there exist any sellers in such a case, as the proprietors of estates are brought to a necessity of alienating chiefly by the love of luxury, and the purchase of others' labour, which would scarcely happen, if no commercial or manufacturing industry were in existence, as they would have nothing to purchase, and, consequently, no inducement to extravagance. In a nation purely agricultural, where no manufactures or commerce exists, the upper class, if there is one, may remain unchanged for centuries, as no inducement is to be found for alienation, and no individuals to purchase, if such inclination for sale existed.

The feeling of the nation, which manifested itself in favour of the reformation, was supported by the middle class of that day, as well as the upper. The act of Henry VIII., which spoiled the abbeys and other foundations, also had a tendency, by separating and subdividing property, to increase the middle class, as before observed. The dawn of public opinion in England, though, at its commencement, weak and indistinct in the former reigns, yet began to be perceptible in that of Queen Elizabeth. It was probably a similar feeling that favoured the reformation, and brought about the secession of this country from the see of Rome.

Had the tenets and doctrine of Luther been promulgated at an earlier period in England, say a century before, in the reign of Henry IV. or V., it seems the people at that time would not have been sufficiently enlightened to receive and comprehend them, and still less so, had they been made known at any period of an earlier date; but these doctrines were made public at a time when there existed just sufficient information in the country, to enable the several classes, such as they then were, to understand them, and the consequence was, they were eagerly adopted throughout the community. On taking a cursory view of the events that occurred during the reigns of Henry VIII., of Mary, and Elizabeth, it may, at first sight, appear as if some vacillation existed in public opinion (if such an appellation can be given to the feeling which then existed) concerning the reformation. The people seemed to change opinions with their sovereigns; and, by foreigners, the

English have been reproached with being, at that time, either too indifferent about their religious creed, or with being too subservient to the sovereign of the day, by adopting his sentiments. This reflection, however, can only arise from inattention to the state of the public mind. The fact was, that public opinion was, at the commencement of the reformation, nearly equally balanced for and against the reformation; so great was the ignorance that prevailed throughout the country: the consequence was, that, on whichever side the influence of the crown was placed, an influence at that period much more powerful than we can have an idea of at present, on that side did sentiment for or against popery preponderate; but this could only have lasted a short time; the good sense and increase of information, fast spreading throughout the country, during the reign of Elizabeth, would effectually have overcome all obstacles. If James I. had attempted to introduce popery, and to force his subjects into submission to the see of Rome, it may be doubtful whether public opinion could at that time have been sufficiently powerful to expel him from the throne, as it did his grandson, eighty years after; but it is quite certain that James I. never would have succeeded in the attempt, had he felt such an inclination.

Even so early after the reformation as the latter part of the reign of Elizabeth, so much was public opinion augmented, that it would have been fruitless to attempt the restoration of papacy, and might have been attended with serious consequences. Every year that succeeded,

added, though perhaps in an imperceptible degree, to the information of the people, and particularly to the higher class, such as it was at that period *. There can be no doubt that the reformation assisted in a very powerful manner the progress of civilization, and, consequently, the increase of the middle class, and of public opinion, as it encouraged the industry and activity, both commercial and manufacturing, of the population in England †, as it has done in every country where it has been established. At the same time that the reformation produced these effects, the reformation was also

* The changes in the government under Queen Mary and Elizabeth, with regard to papacy and the reformation, have, by some historians, been alluded to as evincing the power of the sovereign over the feelings of the people. There is no doubt that, at this period, the influence and power of the sovereigns in England had no control; but it cannot be asserted that their power influenced the feelings of the mass of the people on this subject. The fact seems to be, at that time the nation was nearly equally divided between catholics and protestants. The balance being nearly equal, the influence of the crown was sufficient to turn the scale on either side at that particular period; but every year that followed strengthened the middle class and spread some information, though perhaps in a slow degree, over the community. Although James II. was probably possessed of the same power as Mary, yet all his attempts to introduce popery were unavailing, and the nation was unanimous against him, because the nation was improved in civilization, and public opinion was powerful in the days of James II., and in its infancy in those of Mary.

† That the protestant form of worship encourages industry of every description much more than catholicism, is strongly exemplified at the present moment in the free cantons of Switzerland, where the protestant and catholic ones are neighbours: a striking difference is observable between the neatness, appearance of comfort, wealth, and activity of the one, over the squalid appearance, dirt, and poverty of the other. The difference must be witnessed to

brought about in some measure by the activity and commercial industry that had taken place, so that it acted and was acted on both as the cause and effect of the increase of civilization and the progress of public opinion.

It is singular that the ordinances of the church of Rome (whether intentionally or not, is nothing to the purpose) check, by several regulations of an ecclesiastical as well as temporal nature, the progress of industry and of its consequences on public opinion.

Under Queen Elizabeth's long reign the nation proceeded in a slow and gradual manner to augment its industry, and to gather its fruits. The middle class being favoured by the alteration of the law regarding real property, to which allusion has been made, and favoured by the doctrines of the reformation.

Such was the state of England at the close of this reign. What small middle class there was in existence, was chiefly to be found in towns favourably situated for commerce; and this class, as such a class always has and always will be, was anxious to secure to itself a certain freedom and independence, and applied to the court, and was generally successful in obtaining a charter of incorporation or some commercial immunity or privilege *. Thus this small middle class was created,

be duly appreciated. In other countries where the advantages of soil and climate are equal, the same difference is perceivable, where the difference of the religious tenets is found to exist.

* We may observe in England the cause of the formation of corporate bodies in towns, on the same principle as the formation of

partly by the subdivision of land occasioned by the disposal of some of the estates of the barons, by the sale of the church property seized by Henry VIII., and still more by whatever amount of commerce and manufactures which had already made their appearance, although in a trifling degree, of which, at the present day, we can scarcely form an idea.

§ 4.

In this manner did the middle class imperceptibly increase and grow into notice, and they were possessed of influence in the country, when the dissensions and the disagreement between Charles I. and his parliament took place, which were followed by the civil war, and concluded by the death of that unfortunate monarch. The situation of Charles I. was one of a very peculiar description; he, as well as all the advisers that he called to his councils, were totally ignorant of any feeling like public opinion, and of its power, or of any thing like a middle class. He was placed in a perfectly novel situation, totally unacquainted with the causes of the reformation and the re-action of such a change on the

the small republics of Genoa, Venice, &c. &c.; that is, the creation of a middle class of society by commercial activity or other pursuits, and the consequent formation of public opinion, and the natural result or desire to become free and independent. Those establishments, at that time, were miniatures of what England would be, and is at present, and what one may reasonably suppose that the civilized world will gradually come to, forming everywhere communities established and supported by public opinion.

minds of the people. He probably imagined it was his duty to uphold the prefogative, and to keep entire whatever authority or power had been enjoyed by his ancestors, a prerogative that could only be securely exercised where there existed nothing like civilization, a middle class, or public opinion *. The king was determined to enforce what he considered his prerogative. Public opinion, such as it then existed, felt anxious for the enjoyment of certain rights, and the riddance of some imposts equally tyrannical and unjust. At the commencement of the reign of Charles I., an alteration was perceptible in the nation: the middle class, during the reign of James, had augmented considerably; the upper class was better educated and more enlightened. Men of information and talent were to be found capable of giving opinions on political questions that were likely to be adopted by the mass of the educated people, and of forming some resemblance to public opinion †.

* After the reformation had taken place in England, and a certain proportion of wealth and intelligence was diffused through the country, and a middle class and public opinion would naturally have some influence, it was quite impossible that the state of things in this country could remain as they were, or that the prerogative of the former kings, which made them, in fact, despotic, could be tolerated.

No one can pass over this part of the English history without feeling a sentiment of regret for the unhappy situation of Charles I. and sorrow for his tragical end, which was not the work of public opinion, but of a few daring and desperate individuals, who, at that time, influenced and controlled the army.

† The instance of Hampden's determination, and of his refusing to comply with the impost of ship money is well known; it excited a sensation in the country, and there is reason to think that he was entirely supported by public opinion. It,

§ 5.

There is no particular necessity to dwell on this part of our history; the struggle between Charles I. and his parliament, was, in fact, the struggle between the king's prerogative,—that is, of a few courtiers and part of the lower class, against the middle class, such as it then was, together with that part of the upper class that united with them, and with those of the lower class which the other two classes could influence. At first, so nearly did the parties seem balanced, that, after the breaking out of the civil war, that is, after the king raised his standard at Nottingham, it seemed doubtful which would preponderate; but as the contest was protracted, it became evident the advantage must be on the side of public opinion, as it would daily get stronger, from the very discussions which such a contest would produce; whilst the other side must proportionably get weaker from the same cause.

It seems certain also, that when the judges had given their opinion in the case of ship money, Hampden became more popular than ever. Their decision, if we may adopt the opinion of an acute and well-informed observer of what passed in those days, did the king's cause great injury with the public: Lord Clarendon says, "And here the damage and mischief cannot be expressed that the crown and state sustained by the deserved reproach and infamy that attended the judges, by being made use of in this and like acts of power, there being no possibility to preserve the dignity, revenue, and estimation of the laws themselves, but by the integrity and innocence of the judges, &c. &c."—Vol. I. p. 109, 8vo. ed.

From this it appears, that something like public feeling was considered to exist, since the decision of the judges in Hampden's case occasioned so much disgust in the minds of the people.

"In a contest where recourse is had to force, and a civil war seems likely to ensue, whatever good feeling exists in a country is so decidedly averse from such extremes, that at first it may remain passive; more especially when such feeling, or public sentiment, is not thoroughly pronounced, or so strong as to determine the question. This seems to have been the case with public opinion in England at the beginning of the contest with Charles I. The public sentiment, in the community, seemed resolved to obtain certain rights and securities against the king's prerogative, but not to drive things to extremities, or act in open defiance to the sovereign. When, however, Charles I., by displaying his standard at Nottingham, began the war, and public opinion observed there was no alternative, but that either the liberties for which they anxiously panted must be given up, or Charles must be opposed, then it was that gradually it went against him, and supported parliament, until he was in their power. With the subsequent proceedings, however, that is, the dissolution of that assembly, and the treatment of Charles, public opinion had no concern; it was the work of the army and its leader, and not of the nation. The following observations we think will prove the truth of this remark.

§ 6.

It appears from the proceedings of the House of Commons at that time, that public opinion was sought to be conciliated, and that there was sufficient informa-

tion amongst the community, to form a judgment on political matters. The celebrated remonstrance was, after a violent debate, drawn up and published (A. D. 1641); an act quite unprecedented in those days. The publication of this remonstrance, it will be remembered, created a difference between the then leading members in the house, when Mr. Hyde, afterwards Lord Clarendon and others seceded; both parties were fully aware of the great importance (even at that period) of such an appeal to the public, from one of the branches of the legislature*. In fact, it is worthy of remark, that during the differences and subsequent contest between the king and the two houses of parliament, various manifestoes and appeals were written and published by each party. These it is evident, were drawn up and made public, not for the sake of the parties to whom they were addressed; each side was too fully bent on its own line of conduct, and too much engaged by prejudice, or party feeling, to be diverted from its purpose; but these appeals were promulgated to influence public opinion, which would prove that something like public opinion, although in a very weak state, did then exist, as it was not undeserving of attention. On following the progress of the civil war that ensued, which may be said to have commenced from the day

* Lord Clarendon says, "It was ordered that their declaration, which they had sent to him, should be speedily printed, and carefully dispersed throughout the kingdom, that the people might see upon what terms they stood, and all other possible courses were taken," &c. &c. *History of the Rebellion and Civil Wars*, Book IV.

that the king set up his standard at Nottingham, (August 25, 1642,) there is no difficulty in tracing how public opinion was inclined.

In our reflections on this melancholy part of the English history, the principal documents we have referred to, have been Lord Clarendon's account of the rebellion and civil war, which, although from the writer taking an active and prominent part in the transactions of those days, may not be entirely impartial, yet may be considered to bear the stamp of sufficient authenticity to make it a proper book of reference, particularly if the facts and statements are taken without his deductions. From many passages in this history, it appears, even from the accounts of the opposite party, that public opinion, such as it was, supported the cause of parliament, "For though the gentlemen of ancient families and estates in that country were, for the most part, well affected to the king, and easily discerned by what faction the parliament was governed, yet there were a people of an inferior degree, who, by good husbandry, clothing, and other thriving arts, had gotten very great fortunes, and by degrees getting themselves into the gentlemen's estates, were angry that they found not themselves in the same esteem and reputation with those whose estates they had, and therefore, with more industry than the other, studied all ways to make themselves considerable. These, from the beginning, were fast friends to the parliament, and many of them were now intrusted by them as deputy lieutenants in their new ordinance of

the militia, and having found when the people were ripe, gathered them together*."

This is a very important passage to illustrate the ideas we wish to convey concerning public opinion. It shows that a new set or class of men were in existence, and had possession of many of the estates which had by that time been sold in consequence of the new doctrine for cutting off entails to which we have alluded. These persons, who might be placed in the upper division of the middle class, were at that time rapidly augmenting in numbers, and being, from the absurd notions then prevalent, deprived of that consideration in the state, or with the government, to which they were from their property justly entitled, were, of course, hostile to the king, and friendly to the parliament.

This also shows the state of things at that time, and how great a change has been effected within two hundred years. The class of persons to whom Lord Clarendon alludes, felt themselves deprived of what may be styled the legitimate influence of property, and were not thought, by king Charles and his advisers, fit to be trusted with any authority or influence, because they had lately become possessed of their property; so that, in those days, it was not property that formed a particular class. How different the case is in the present time need not be mentioned; it is precisely the very class to which Lord Clarendon alludes, which is at present so powerful, and so well disposed in favour of the consti-

* Lord Clarendon's History of the Rebellion.—Vol. II. part 1, p. 5, 8vo. edit.

tution. It was by persons of this description, some of whom would rank in the upper, and the remainder in the middle class, at the present time, that the scale, at the revolution, was turned against the king. The lower class was, probably, in those days, the same as all lower classes were in former times, without any fixed opinion, and easily turned to one side or the other, by those who exercised a certain influence over them. If left to themselves, they might have been favourable to the royal cause; and yet they were, probably, with no great difficulty, induced to act against it. The upper class was nearly divided; if it had been otherwise, the king could not have made so long a resistance as he did to the forces of parliament, as almost the whole of the middle class were against him. Public opinion may be said to have been decidedly against Charles, during the whole of his contest with parliament, and it was not until his tragical end that it was less unfavourable *. In saying this, it is far from our wish to convey any insinuation that the trial and condemnation of Charles was supported by public opinion; such was certainly not the case. It was the desire of the well-informed, at that time, to establish a constitution somewhat resembling what afterwards took place at a subsequent period. Public opinion wished to set limits to the extent of the prerogative, in short, to obtain what has been since that time obtained at the accession of

* A late historian on the Commonwealth of England, says, "The day that saw Charles perish on the scaffold, rendered the restoration of his family certain."

the House of Hanover; it was certainly not consonant with that sentiment to go the extreme lengths to which the business was carried by the leaders of the army. It is probable that, during this period, until the restoration of Charles II., the several parties that wished either for a protectorate, a republican form of government, or a monarchy, were so equally balanced, that public opinion was not sufficiently decided to outweigh the power of the army, by whose agency it must be recollected the king was deposed, and his son reinstated. There can be no doubt, however, that public opinion was more in favour of the restoration than it had been for the destruction of the monarchy *; in the latter case, therefore, the army was supported by public opinion.

* When we come to the consideration of the state of public opinion in France, opportunity may be given to dwell more on the subject. We will just observe that the sentiments recorded by Lord Clarendon to have been entertained in England during the revolution under Charles I., by the middle class, very much resembled the feeling that existed in France about thirty years ago, at the commencement of the revolution in that country. In both cases real grievances existed, which, as far as public opinion extended, were felt, and eagerly sought to be redressed. In both the middle class of society, and some of the upper, lately sprung up, were dissatisfied, and by exciting the lower class, had recourse to physical force to redress their grievances, and to establish for themselves that consideration to which, from their property, they were entitled. In both, a successful resistance was made, and a change in the form of government was the result: in both, the armed force got the upper hand; but here the resemblance ceases. In England, a moral principle was to be found that formed public opinion; in France, from the peculiar and faulty influence exercised by the catholic clergy, when this was lost, no religious feeling or moral principle was left amongst the people, and the dreadful effects are too well known to be here mentioned.

§ 6.

It is observable, as we have said, that public opinion, at the breaking out and during the continuance of the civil wars, was for the parliament to a certain point, but no further. It may be asked, How it happened, if this was the fact, that such further proceedings could take place, if against the sense of public opinion, with which they at first originated. The case seems to be this: whenever public opinion in a country is so powerful that nothing can resist it, then little danger is to be apprehended from popular insurrection. In other words, when the upper and middle classes of society are as numerous as they are in the present day, their numbers, and, consequently, their aggregate of wealth and influence, must effectually keep off any insurrection of importance in the lower class; but when public opinion is not powerful, or those classes which we have just mentioned are not so numerous as to act without fear of opposition, which they certainly were not in the time of Charles I., in that case they act not only by themselves, but by means of the lower class; and if their influence is not paramount, it may be sufficient to agitate the lower class, and set it in action, without the means of restraining it according to their will at any subsequent time. A number of men may unite together, and move a rock, so as to roll it down a declivity, but if their numbers or power be not great, and if the declivity be steep, it

will roll onwards without either check or control, and may carry destruction and devastation wherever it happens to fall. In the same manner, the lower class cannot of itself move to any purpose; at the instigation and by the influence of the upper and middle classes, and, perhaps, of the latter alone, the motion may be given; and unless the other two classes are numerous, (it must be remembered that, in this case, numbers are wealth, and, consequently, influence and power,) a revolution may end in a military government. Such was the case at this time of our history, as well as in France at a later period: this subject, however, will be considered more fully when we come to the causes of the French revolution. That the feeling of the public during the progress of the disputes between Charles I. and his parliament, was such as we have described, will appear from the following passages of Lord Clarendon's History, who, be it remembered, was on the king's side, and, therefore, cannot be supposed partial on the present occasion.

"For they (the Parliament) had not only their garrisons in Warwick, Coventry, and Banbury, within distance, but all that country so devoted to them, that they had all provisions brought to them without the least trouble; whereas, on the other side, the people were so disaffected to the king's party, that they had carried away or hid all their provisions, insomuch that there was neither meat for man or horse; and the very smiths hid themselves, that they might not be compelled to shoe horses, of which, in those stony

ways, there was great need."—Vol. II., part i., p. 67, 8vo ed.

Again, "The parliament, on the other hand, assured themselves, that the nation was entirely theirs."—Vol. II., part i., p. 98, 8vo ed.

Again, "The Earl of Essex stayed in that joyful town, (Gloucester) where he was received with all possible demonstrations of honour, three days; and, in that time, which was as wonderful as any part of the story, caused all necessary provisions to be brought into them, out of those very quarters in which the king's army had been sustained, and which they conceived to be entirely spent, so solicitous were the people to conceal what they had, and to reserve it for them."—Vol. II. part i., p. 517, 8vo ed.

One thing is worthy of remark, as it shows the feeling of public opinion: although parts of the country were in favour of Charles, almost all the towns, where the middle classes were chiefly to be found, appeared hostile to the cause of that monarch. As this seems to have been generally the case, it serves to confirm the statement that there was, at that time, more information, and more of a middle class in towns than in the country, and that public opinion, therefore, was more powerful in the former than in the latter. The same observation applies to most communities, unless particular circumstances, from bigotry or ignorance, arise, which, however, in the present day, is not so likely, whatever may have been the case in former times.

It must, however, not be forgotten, that the public

opinion, in the days of Charles I., was weak indeed when compared to what we find it at present; yet, even in those days, it must be allowed, that the sentiments of the people determined the contest between Charles and the parliament. When first the divisions took place, and recourse was had to arms, part of the nobility and of the principal gentry, (who at that time composed the upper class, not, as in the present day, formed entirely by the comparative wealth of the individuals, but then established according to their titles or pedigree,) and their retainers, were, in general, on the king's side. At first their discipline and their courage obtained the victory in despite of numbers; but at length that occurred which generally takes place in a contest between regular troops and a population if supported by public opinion, and protracted beyond any length of time—the population, by degrees, acquire discipline, and the art of war, from those who have beat them; and that side is most likely to prevail which is possessed of the greatest resources and the greatest number of troops. Lord Clarendon, in his History, observes, "The courage and resolution of those few (i. e. the king's troops) were such, and the cowardice of the undisciplined seditious rabble and their leaders was so eminent," &c. &c. In many other parts of his narrative similar passages will be found, all which confirm the idea that public opinion must have been tolerably strong amongst the people to enable them to encounter such disadvantages, and in the end to prove successful. If any additional proof were

wanted, the reception that Charles met with before Coventry, Gloucester, and other places where no troops belonging to parliament were stationed, would afford one, as we may reasonably suppose that the inhabitants and people acted entirely from their own sentiments when left to themselves. At the same time that we think public opinion was against Charles, and that a constitution similar to what was established at the latter part of that century was desired by the people, it must be allowed that this unfortunate monarch was, perhaps, more to be pitied than censured for the course that he pursued. He was born at a time when high notions were entertained of the prerogative attached to the kingly office. Public opinion was not then either so decidedly declared or so manifest as it has been of late years. Charles was not in a situation, nor did he mix enough with his subjects, to observe the state of the public mind; and as no countries, at that time, in Europe, had any notion of a limited monarchy, or of a king governing otherwise than by his will and pleasure, it is scarcely to be wondered, that Charles himself should not be able to discover or understand the rise of public opinion, or its influence in the country, when it escaped the observation and sagacity of his ablest advisers at that time. Probably this did not arise from any deficiency of talent in those about him, but from the difficulty which men in general feel in forming their opinion in any other manner than from former events. Although, therefore, Charles was as mistaken in his opinions as he was unfortunate in his endeavours to

maintain them, yet allowance must be made, if we consider his private character, and the times in which he lived, for the bias and prejudices imbibed from his education, and the situation in which he was placed.

Public opinion, at that time, was not so powerful, but that, if Charles had been prudent, and sagacious, and firm, the revolution might have been warded off for a few years. If that monarch had been more pliable, and less tenacious of what he thought were his rights and his undoubted prerogative, he might have yielded to the wishes of parliament and of his people, and granted what they were determined to obtain. But we cannot think that all the talents or influence of any government could have prevented the nation, for a century longer, from obtaining that on which their wishes were so strongly bent,—the right of taxing themselves, and a perfect security of person and property; in short, of establishing the constitution, such as it was formed within half a century from that time, at a subsequent period.

It seems, therefore, that the opposition to Charles I. was made by parliament and the country, and supported entirely by public opinion, such as it then was; that the whole of the middle class was unanimous, and even many of the upper class, as appears from the accounts of those days. We cannot allow that the subsequent excesses were sanctioned by public opinion: they seem to have been perpetrated by the leaders of the army, (chiefly composed of the lower class,) over

whom Cromwell gained an ascendancy, by encouraging their enthusiasm, aided by other arts.

When Cromwell dissolved the parliament, and assumed the supreme power in the state, it cannot be said that he was in any manner supported by public opinion. He was set up and supported by the army; and during his protectorate it does not appear that he ever had the confidence or good will of the country. The power he assumed seems to have been chiefly supported by the affection of the troops, by his personal activity, prudence and sagacity, and probably by an idea that might be prevalent throughout the country, that, if he was driven from the protectorate, the state affairs would fall into confusion, and the army after all might appoint some other favourite. The Presbyterians were not then sufficiently reconciled to the family of the late king. The Levellers and Independents were by no means desirous, at that time, to restore the monarchical form of government; and although public opinion was in some measure formed, and of importance, yet the middle class of society was small, compared to its number in later times, and the first division of the lower class seems to have then possessed considerable influence; and of this class the Levellers and Independents were chiefly composed. Under these circumstances, the nation tolerated the usurpation of Cromwell, without any further struggles to establish the constitution; and considering at that time the strength of the army, and its affection towards him, and also that the middle class, and consequently public opinion, was not so well established, or

so strong as it has subsequently grown, such an attempt by the people, to dispossess the army of its assumed power, might not, at that time, have been successfully made. There can be no doubt, that the spirit of fanaticism which Cromwell had the art to promote in his army, tended in a great degree to secure their obedience to his will, and to promote his views. Perhaps the same feeling of fanaticism assisted at that time public opinion in its resistance and opposition to Charles I. and secured the establishment of the protectorate: without the existence of this spirit, it is possible the lower class would not so readily have given their assistance, and the revolution might not have taken place until some years later, when civilization had made more progress, and the influence of public opinion more powerful.

During the course of the revolution and civil war, few instances occur of the spoliation of private property by the existing government or by its agents; nor does it appear that any flagrant acts of bad conduct took place of one class against another *. It must not be

* The case was very different during the late revolution in France, which may have arisen from the middle class being more powerful in England, when compared to the lower class, than in France; and also that moral principle, so essential a portion of public opinion, existed to a certain point in England, but, unfortunately, was rare in France. It turned out in that country, as it usually does in countries where the catholic clergy have a certain influence, the minds of the lower class mistake certain forms and ceremonies for religious feeling. The moment the former cease to have influence on their mind, they are totally bereft of any thing like religious feeling or moral principle, and commonly fall into scepticism;—to what an extent this occurred in France will appear in its place.

forgotten, that the revolution under Charles I. was not any change in the relative positions of the several classes of society with regard to each other, but consisted in the overthrow of the existing government and the power of the king. The upper and middle classes were not deprived of their property; and the rights of individuals and their possessions were in general respected, with the exception of those who had taken up arms, or who were obnoxious to the ruling power in the state.*

§ 7.

There is no necessity for dwelling longer on this melancholy period, after having attempted to define the state of public opinion at that time†. We may

* The civil war that took place between Charles I. and his parliament was a contest between the sovereign power and the middle class of society; it was not such an overthrow of all social order, and a change of the several classes of society, as took place in France during the late memorable revolution. When we come to that part which regards the state of public opinion in France, further opportunities will present themselves of considering the difference between the two revolutions: but it would be foreign to our purpose to enter into them at this period.

† The opinion given of the situation of Charles I., and of the fanaticism that prevailed at that time in England, will be found confirmed by the following passages placed together.—" It was the fate of the House of Stuart to govern England at a period when the former source of authority was already much diminished, (that is, the king's prerogative,) and before the latter (power of parliament) began to flow in any tolerable abundance. Without a regular and fixed foundation, the throne perpetually tottered, and the prince sat upon it anxiously and precariously. The majesty of the crown derived from ancient powers and prerogatives, procured

proceed to the consideration of what took place after the usurpation of Cromwell*, which seems to have

respect and checked the approaches of insolent intruders; but it begat in the king so high an idea of his own rank and station, as made him incapable of stooping to popular courses, or submitting, in any degree, to the control of parliament." Again of Charles I.—"Had he been born an absolute prince, his humanity and good sense had rendered his reign happy, and his memory precious; had the limitations on the prerogative been in his time quite fixed and certain, his integrity had made him regard as sacred the boundaries of the constitution. Unhappily, his fate threw him into a period when the precedents of many former reigns savoured strongly of arbitrary power, and the *genius of the people* ran violently towards liberty."—HUME's *History of England.*

* To show the fanaticism prevalent at that time,—"The keeping of Christmas holidays was long a great mark of malignancy, and very severely censured by the commons."—WHITELOCKE, p. 286.

Again—"Even minced-pies, which custom had made a Christmas dish amongst the churchmen, was regarded, during that season, as a profane and superstitious viand by the sectaries; though, at other times, it agreed very well with their stomachs. In the parliamentary ordinance for the observance of the Sabbath, they inserted a clause for the taking down of maypoles, which they called an heathenish vanity."—WOOD's *Fasti Oxonienses*, p. 740.

To show how much the public opinion of the nation had increased in consequence of the greater proportion of commerce, the following may be quoted:—

"The customs before the civil wars are said to have amounted to five hundred thousand pounds a year, a sum ten times greater than the best period in Queen Elizabeth's reign."—HUME's *History of England.*

No historians speak of the monarchs of England as otherwise than despotic kings, before the reign of James I. If this is doubted, reference may be made to the following authorities—Sir Walter Raleigh's works; the Βασιλικον Δορον; Malherbes' works of 1614; also Malherbes' *Dissertations on Livy*, and Overall's *Convocation Book.* In none of these works is any thing said of the king's limited prerogative. In most he is allowed to have the same power over his subjects as the kings of France and Spain; and in

arisen from this circumstance, that the army, having arms in their hands, were too powerful for the public opinion then in existence: the result took place, which generally does in such cases, that is, the organised force, being the strongest, acted as they thought proper. When public opinion became more firmly established, such an event could not have taken place, nor, it may be added, could such a civil war.

§ 8.

It has been a subject of surprise with some of the narrators of the events of those days, that such a vacillation of feeling should exist in the public mind; that at the death of Cromwell so many addresses should be presented to his son and successor, Richard; and yet that, a short time after, the nation should have received Charles II. with a sort of universal acclamation.

At that time the nation was tired of civil discord, of military rule, and of an unsettled state of affairs. The people might be divided in opinion as to the restoration of the lawful king; but when the general, and the army he commanded, declared for Charles, the scale was turned, and the royal party had the preponderance.

The great bulk of the nation was formed of royalists

one it is asserted, that France was the most legal and popular monarchy in Europe.

Let any one, who is yet sceptical on that head, inspect the petition of right presented to the commons in the reign of Charles I., and passed by the lords with little alteration.

and presbyterians. Of these, the former certainly would prefer, and the latter might be induced to give the preference, to the son of their late king. When the dislike for public affairs of Richard, the son of the Protector, and the factious disposition of the army, had induced him to retire from public life, it was feared that the army might engross the whole power of the state, and place whom they pleased at its head. This was equally offensive to the royalists, the presbyterians, and the republicans; all these, therefore, united, the first from choice, and the two latter from necessity, in wishing for the return of the royal family. Whatever might be the wish of the nation, and the state of public opinion at that time, in desiring the return of Charles, it could not easily be effected, even by all these parties together, assisted by the power of whatever public opinion at that time existed, without the concurrence of the powerful and well-organised army then on foot. As soon, therefore, as this army united itself to the public voice, the Restoration was at once completed, and Charles had only to wonder, at his arrival in England, where was the power or the people that had so long kept him from the throne.

Chapter II.

§ 1.

From the Restoration in 1660, to the Calling in of the Prince of Orange.

At the death of the Protector, the state of public opinion in England, at first, inclined towards his son, at least if we judge from the addresses that were presented to him from different places, and other appearances. It seems, however, from the subsequent events, that the feeling of the country was not so much in his favour, as for the legitimate monarch. To those who were staunch republicans, it was, probably, much the same, whether Richard reigned as protector, or Charles as king. The middle class was divided on the subject; the upper class was for Charles; and when the army declared itself also in favour of the exiled prince, it was probably supported by the public opinion of that time, which seemed desirous, at any cost, and under any circumstances, to avoid the chance of another civil war that, on Richard's resignation, might have arisen, from the pretensions of some of Cromwell's lieutenants, and from the claims of the royalists.

It cannot be denied, that a great and unpardonable fault was committed by the leaders of the party which

favoured the restoration of Charles, in not making his return conditional, that is, to depend on certain concessions and grants of a nature favourable to liberty and to the constitution, which were obtained thirty years later from William, on his being called to the throne. It is probable, that if the leaders of the army, or of parliament, had made such conditions with Charles, and that they had been scrupulously observed by him, the dissatisfaction of the country, and the opposition to the court and to its measures, at the close of his reign, would have been less violent; in short, that public opinion would then have been more in his favour.

It may, however, be a subject of doubt, how far public opinion was at that time enabled to judge of the expediency of such a measure. Thirty years, at that period, might create a great change in public sentiment, by adding to the information of the people; and the feeling of public opinion that manifested itself in 1688, might not, at the restoration of Charles II., have been strong enough for the above purpose. On reflecting, however, on the causes of the revolution under Charles I., it appears that the nation was, at that time, not only desirous, but determined to obtain something like a limit of the king's prerogative, and to establish their liberty on a secure basis. If such a feeling then existed, how much more powerful must it have been after the Commonwealth! There seems, therefore, but little doubt, that public opinion, if uncontrolled by the army and the adherents of Charles, was desirous even then to obtain a bill of rights, and the

other securities against the encroachments of the prerogative, granted some years later.*

The unsettled state of affairs, the danger of delay, and the difficulty of fixing any particular terms, and the want of union in the leaders of the several parties that were influential in the country, together with the different opinions entertained by the Commons' house, probably prevented any attempt of prescribing conditions to the monarch on his return. That such, however, must have been desired by the nation, seems probable from the almost unanimous feeling on the subject thirty years after, on the arrival of William III.; and the measures taken in consequence by the country. Want of time, if nothing else, prevented parliament, as well as its unpopularity at that period, from asking for any security for the future.

It may not be necessary to follow, in regular order, the thread of our history from the Restoration to the present time, but rather to select various periods in which important events have occurred, by which means the progress and increase of public opinion in England may best be defined. To trace, without intermission, the course of history, would swell our remarks on this part of the subject in a needless manner, and might, probably, not illustrate the subject so distinctly, or make the progress of public opinion so

* The indolence and love of ease of Charles I. induced him to make fewer inroads on the liberty of the subject than might be expected; yet it is clear, from his manner of thinking and general conduct, that he considered his rights and prerogative as paramount, and his power above control.

discernible. If a simile may be allowed, the motion of the index of a clock is better observed by marking points at some distance from each other, and observing when it reaches those points, than by watching without intermission its slow and imperceptible progress.

We have already said that the nation forsook Richard, the son of Cromwell, and desired the restoration of Charles II. Often it has been observed, Charles was partly indebted for his return to the reconciliation with the moderate party, but more especially to the desire of the nation taken collectively, who thought that a free and rational system of liberty, and a good government, were more likely to be established by a monarchy, and under the son of their late monarch, than by any other theoretical plan that might be devised; besides avoiding the chance of a civil war, and suppressing the hostility and dislike that the various factions entertained for each other. It was truly said, in those days, that the king was more indebted for his restoration to the reconciliation with his opponents, than to the exertions of those servants and followers of his father and his family, who had exposed their lives and risked their fortunes in support of the king's prerogative.

The presbyterians, the republicans, the royalists, and the whole mass of the community, were more inclined to support the rights of Charles to the throne, than of any other individual: they dreaded the chance of being under the tyranny and subjection of the army, which might place some favourite leader at

the head of the nation. In fact, when Richard had declined the protectorate, it does not appear that any other choice was left to the people; and public opinion, such as it then was, certainly united in wishing to have as chief magistrate the young prince whose father had been their king, who had himself suffered reverses that might correct too lofty ideas of prerogative, and who, in every respect, not only had the fairest claim, but was also as likely to support the existing laws and customs of the state, as any other individual that could be selected *.

Public opinion was, therefore, sufficiently pronounced at this time, concerning the re-establishment of the kingly power, to justify and support General Monk in the course he pursued, and the policy he adopted.

During the continuance of the Commonwealth, pub-

* Perhaps nothing shows the incomplete state of public opinion, and the precipitation and confusion with which all public affairs were at that time conducted, than the hurry with which the restoration was brought about, without any conditions being made, or any security obtained from the king, that the constitution should be established on a firm basis, and that enactments should be formed against all future encroachments of the prerogative on the rights of parliament, or of the people.

Charles II., at that time an exile and wanderer, with little probability of being again seated on the English throne, would, when called on for that purpose, gladly have subscribed to the conditions that were, thirty years later, agreed on by another prince. If he was not required to do so by the people, it shews the weak and unsettled state of public opinion at that time concerning the constitution; probably, the vacillation in state affairs, and the sudden turn that took place when General Monk and the army declared against the old parliament, prevented the consideration of such a subject at the time; when he was restored, it was too late.

lic opinion had, of course, increased. Not only was a stimulus given to the industry of the nation, but, from the very nature of wealth and industry, if it does not retrograde, it must advance,—probably not in the same ratio at one time as at another, but yet in a positive manner. The same observation applies to the state of the public mind during the reign of Charles II.: although an increase in the industry, commerce, and consequently wealth of the country was taking place, yet it it seems not to have been very considerable *. At this time commerce and manufactures, and our communication with foreign countries was limited, compared to what it became some time after.

It is thought advisable to avoid any statement in figures, of the increase of the manufactures, shipping, &c. of England, during the period to which we allude; but, with very few and very trifling exceptions, these will be found invariably to increase, more especially at its close. About the time we are now speaking of,

* "It will hardly be believed that this money (fifty thousand from parliament, and ten thousand from the city) presented to the king by the parliament and the city, and charged by bills of exchange upon the richest merchants of Amsterdam, who had vast estates, could not be received in many days, although some of the principal citizens of London who came to the king, went themselves to solicit it, and had credit themselves for much greater sums. And so, at this time, his majesty was compelled, that he might not defer the voyage he so impatiently longed to make, to take bills of exchange from Amsterdam, upon their correspondents in London, for above thirty thousand pounds of the money that was assigned."—*Lord Clarendon's History*, book xvi.

the seeds were laid for their future great increase, as appears in consulting the tables on that subject relating to the reign of Charles II. It is probable, that the attention of the people, during the civil war, was too much distracted, and its issue too uncertain, as well as the tenure of personal property during its continuance, to encourage the industry of the nation considerably: however, this was quite recovered, as appears, a few years after, even during the protectorate of Cromwell.

The same may be said of the progressive improvement in commerce, during the reign of Charles II. It is evident also, from the results in 1688, if the nation had not been much informed, and the middle class considerably augmented, it is far from probable that public opinion would have been so powerful and so unanimous as it was at that particular period. It follows, therefore, that commerce, manufactures, and the creation of capital had been gradually augmenting during this reign; and reference to the tables of those days confirms the observation.

Whatever might have been the sentiments of the nation in favour of Charles at his Restoration, and the joy and acclamation by which he was greeted throughout the country, this feeling was not continued for a considerable time; certainly, at the conclusion of this reign, public opinion was evidently not in his favour. This arose from several causes, from the acts of the monarch both public and private, from his not assembling parliament, from the attempts made by some of his ad-

visers to extend the limits of the prerogative in opposition to the wishes of the community, and from other causes.

During this reign, however, concessions were made by the crown highly favourable to liberty, and in accordance with the desires of the nation, that might, under other circumstances, in all probability have conciliated public opinion *. The same feeling of distrust towards Charles, was extended to his brother James in a much greater degree, as appears from the vote of the Commons' House, regarding his exclusion from the throne, which was confirmed at the death of Charles; by the insurrection of the Duke of Monmouth, and by other events indicative of the sense of public opinion about that time. This unfavourable impression was increased against James II., by his own conduct, by his bias to popery, by his bigotry, by the many tyrannical and unconstitutional acts sanctioned by him, and perpetrated in his name, and under his authority, by his officers and servants. This misguided and weak monarch seems, by almost every act of his, both before and after his ascending the throne, to have increased the sentiment of public opinion already unfavourable to him on many accounts.

There is no necessity for dwelling much on the period of the reign of Charles II.: there seems no-

* Had the several acts that passed under Charles II., favourable to liberty, been awarded by Charles I., previously to the breaking out of the civil war, they would have been received with delight by the nation; but the strength of public opinion was much increased at the latter period, and, therefore, was not so easily satisfied.

thing of moment deserving notice. In every respect public opinion was slowly, but gradually, and steadily increasing. The Reformation, which had been in a great measure brought about by the information spread through the nation, was also in its turn assisting the spirit of activity and enterprise already roused, and wealth and a middle class were increasing throughout the community. A strong feeling of distrust of the House of Stuart, an idea that their occupation of the throne was unfavourable to the cause of liberty, and many other circumstances, combined to bring about the expulsion of James*. These reasons are so fresh in the memory of every one, and so generally known, that it seems scarcely necessary to dwell on them, or to make much mention of the subject. Although the conduct

* It has been observed, that public opinion was not, and could not, from the nature of affairs, be so powerful at the beginning of the revolution and rebellion under Charles I., as it was at the subsequent period in 1688, when the constitution and the liberty of the people may be considered as fully established. What might, at the former of these periods, be wanting in the strength of public opinion, was, probably, made up by a sort of fanaticism, that prevailed more particularly in the army under Cromwell at that time, which might extend itself over the country. As the reformation had been effected no long time previous to the first of these events, it had occasioned a change in the ideas of the people, and their attention was turned towards the investigation, first of religious tenets, afterwards to politics, which added much to the party of the Commonwealth at that time. This seems confirmed by the fact that, after the restoration of Charles II., after such a feeling had subsided, public opinion did not for some time appear powerful. It ought, however, to be recollected that, only thirty years after this period, the revolution of 1688 took place, which then sufficiently evinced the power of public opinion.

of James II. need not be repeated, yet his expulsion, and its consequences, form so remarkable an event in the history of this country, and from being effected without the least violence, shew so clearly the influence, even at that time, of public opinion, that it cannot be passed over without some remarks.

In those days the feeling of attachment to the sovereign was of a personal nature, and very strong. The House of Stuart had held the sceptre of England long enough, not only to attach to itself a number of followers, but even to create in them a sort of veneration little known in the present day. The strength and power of this party had manifested itself at the restoration of Charles, and in the contest carried on against parliament under his father; but so much had the power of public opinion increased*, that, in 1688, the community was almost unanimous in its expulsion of James. Yet, under former reigns, the nation had tamely submitted to acts of oppression and tyranny which it would not bear in James: this sufficiently shews how much public opinion had strengthened itself of late, and how differently the community felt from what it did formerly.

Even in the time of his brother, Charles II., many acts were performed by the court which would not

* It cannot be denied that religious feeling had much to do in expelling James from the throne; but it must be remembered that this feeling has been defined to form part of public opinion. In the reign of Charles I., it was rather fanaticism than proper religious feeling: this was not the case when the Prince of Orange came over.

have been tolerated under James II.; so that even in as short a period an increase had taken place in public opinion. At no former period had public opinion been so powerful in England, never was it manifested so strongly, as in the expulsion of James, and in the placing the Prince of Orange on the throne. It cannot be denied that when one takes into consideration the power and resources of the established government in any country, the army that James had at his command, and all the other advantages of which he was possessed, the manner in which he was abandoned by his subjects, and the expulsion or abdication (as it is called) of that monarch from the throne of England, without violence of any kind, without even the appearance of opposition from any quarter, will appear to be the most signal triumph of public opinion that had, until that time, occurred in any country. The

It must not be forgotten, however, that Charles II., although at that time he might be suspected by some of being a catholic, was not known by the nation to be one; whereas, such an opinion was universally entertained of James even in his brother's lifetime. Besides, the former was popular and agreeable in his manners and behaviour; the latter, the reverse: both these circumstances might, in some measure, influence public opinion. In James, the nation certainly disliked his tyrannical and harsh conduct; and the deeds perpetrated in his name, and by his authority, exasperated the people: but the great feeling of dislike that set the nation completely against him, was the apprehension entertained by the community, that it was his endeavour and intention to bring back popery as the established religion of the country; but this was strengthened by the other causes alluded to already.

Later revolutions have taken place in other countries, which are said to bear a resemblance to what occurred in England at this

extraordinary benefits which have arisen to Great Britain in consequence of these events in 1688, by securing, on the most solid foundation, both the liberty and property of the people, and the house of Brunswick on the throne, fully justify the wisdom and foresight of our ancestors, by whom the event was brought about. It may, perhaps, be permitted again to observe, that this event was effected entirely by public opinion; that all the classes of society united in sentiment; and that the wishes of the nation were assisted by the weakness of the monarch, and the vacillation of his advisers.

Even if James II. had acted with more firmness and judgment, had he concealed his schemes, and attempted to bring about, in an indirect manner, what he was unable to effect by force, he might, perhaps, have retained the throne a short time longer; but he never could have succeeded in his object; the watchful and jealous eye of the people would have dived into his motives, scanned his measures, and opposed his attempts, until a favourable opportunity presented itself of getting rid of him altogether. Greater effects were produced at this time by public opinion, than could have been expected from the relative proportion of the middle class to the others; which can only be accounted for by the general sentiment on religious feeling (one of the component parts

timel. It must not be forgotten, however, that this triumph of public opinion took place nearly one hundred and thirty years before the others, besides being more complete and perfect in its object. When we come to the several countries where those events have happened of late years, the subject will be further discussed.

of public opinion) that pervaded the community at this period*. It seems probable that public opinion was

* When the Prince of Orange landed in England, James II. had a powerful and well-disciplined army, and was in every respect more powerful than his father, Charles I., when he raised his standard against parliament; yet it would have been out of the question for James to make an effectual struggle (even if his mind had been equal to the purpose) against the general feeling of the country. This circumstance alone shews how much public opinion had increased within half a century, from 1640 to 1688.

That the religious feeling in the country very much assisted the revolution of 1688 cannot be doubted. The people looked on James II. as a bigot; they foresaw the introduction of popery, and the destruction of their hopes of a constitution, if he remained on the throne. Even before the accession of James II., the dislike entertained towards him had been unequivocally expressed—(See votes of the commons for excluding the Duke of York from the succession,)—which, pervading all classes of the community, caused the dismissal of James. Such was the weight, and such the power, of public opinion in 1688. Now, in order to appreciate public opinion, let us suppose that the same events had taken place in England two centuries before,—1488: let the king of that period have the same army and treasure, in proportion to the population, as James possessed; and that his son-in-law had landed at Torbay with the same number of men in proportion as the Prince of Orange brought over;—it is perfectly clear that no public opinion existed in 1488, and, consequently, that no such revolution could, at that time, have taken place. Again, let us make a similar supposition in 1588, and consider what would have been the result. Although a feeble ray of public opinion might, at that time, have existed in England, yet it certainly was not sufficiently strong to effect this change against a well-organized government, and an army such as James had under him. Retrospective views serve, perhaps, occasionally to mark the progress of public opinion, and explain its power. To revert, therefore, to the most distant of these two periods, the year 1488, at that time James II. would probably have been looked upon, by the few barons and courtiers that attended on him, as an excellent king. The voice of the people, to which some historians allude, was, in fact, in those times, nothing;

so decided against James II., that, even if no Prince of Orange had made his appearance, or been in existence,

as there was then in the country but a small upper class, very ignorant, chiefly devoted to arms, and, in general, favourable to the reigning prince, and an immense lower class, still more ignorant and barbarous. The little information that existed in the country was to be found amongst the clergy, who were influenced by the superiors, as is customary in the church of Rome. Under these circumstances, if any one had attempted to land, accompanied by the handful of men that followed the fortunes of William, it is evident he must have failed in his attempt; and he never would, like William, have succeeded in obtaining the throne.

If we descend a century later, and look at the period of 1588, it will appear that there might have been a better prospect of success than in 1488, though still a very faint one, both from the slight degree of civilization, and, consequently, of public opinion formed, and also from the progress of the reformation. Still, however, it cannot be imagined that William, at that time, could have succeeded; he never would have been so effectually supported by the people, as to be enabled to enter into a contest with a legitimate king, fully established on his throne, and supported by all the weight, power, and authority, which the king's name and government carried with it in those days. A little before the first period to which we have alluded, that is, in 1485, the successful invasion of Henry VII. took place. His being seated on the throne did not depend in the least on the wishes of the people,—who, probably, had no wish on the subject,—but on his army, which overcame that of Richard III. This was the termination of the wars between the two Roses; a contest between the barons and their retainers, in which the lower class was, probably, at length drawn, either by their passions or interest: they probably suffered all the evils of civil war, in an equal degree with those by whom the war was excited. At that time, the people were in such a state of ignorance as to be totally uninterested in the business, and they contended merely for a faction, or for the name of the White or Red Rose. This, perhaps, shews the state in which they were as much as any thing else: how was it possible, in reality, for the people to be more concerned in the contest, than the jackass in the fable was interested in the contest of the two gipsey-boys who each claimed to be its owner,

the expulsion of the king would have taken place, and some other individual placed in the situation of chief magistrate. In Ireland, and parts of Scotland, public opinion was yet in its infancy; its requisites were scarcely in existence. In the former country, no proper religious feeling was spread amongst the people, or information, facility of communication, or any sort of civilization: as these requisites for the formation of public opinion were wanting, it seems not surprising that this feeling should not manifest itself. There was but a small upper class, scarcely any middle class, and a large lower class; the latter ignorant and bigoted, and the two former not much better. In such a state of things, the party of James II. was certain to find staunch adherents; and accordingly it will appear, on examining the accounts of those days, that, except in a few places, where, by their proximity to the sea-coast, some sort of commerce had been encouraged, or trifling manufactures established, and, consequently, something like a middle class of society had sprung up, which, being possessed of the requisites for public opinion, would be in favour of William and of a constitution, all the rest were favourable to and did declare themselves the supporters of the cause of the Stuarts. The same observation may be made, under nearly the same circumstances, with regard to Scotland. In those remote parts, where civilization and the requisites for public opinion, where no middle class or civilization was found, the lower class influenced by the upper one,

on whom they depended, espoused as warmly as the lower class in Ireland, influenced by the same cause or by their priests, the rights of the exiled family. In all those places where commerce or manufactures had created capital, and the requisites for public opinion, the constitution and House of Brunswick were supported.

Chapter III.

§ 1.

From the Arrival of William III., to the Accession of George IV.

The revolution (as it has been called) of 1688, was a most important epoch in the history of this country, and it may be said in that of Europe. From this time our constitution in England was rendered secure; liberty was enjoyed; commerce and manufactures flourished, and the people of Great Britain were enabled to retain the monarchical form of government; to possess that freedom of speech and action, that security of person and property, and that independence so essential to a free people, and as yet so seldom found and so little understood in other countries.

Ever since this period, the people of England have, in fact, been their own masters, have been governed by a power (that is, the legislative and executive) founded on public opinion, which, at that time, was firmly established, although, since that period, this power has much augmented.

It is true parliament had long been in existence, but the power of the prerogative was not only ill-defined and little understood, but was liable to misconstruction, and had, by the servility of the crown lawyers, (the celebrated instance of ship-money, &c. &c.,) often been

turned to the oppression of the subject *. That this change took place in consequence of the revolution which placed the Prince of Orange on the throne, will be apparent when the acts of parliament, subsequent to that period, are compared to those passed of an anterior date †.

There is no doubt that sufficient information, love of freedom, and desire to establish a constitution, existed amongst some of the upper class and middle one, at the time of the restoration of Charles, and even at the time of the revolution, to have secured these benefits as effectually as was done at the accession of William III.; but, then, it seems probable that public opinion was not sufficiently powerful, the middle class was not so numerous, or the upper one so enlightened, as to bring the business to a termination. It may be said that thirty, or even fifty years, could not do much in civilizing a nation: this is true, if a nation was in perfect ignorance;—but such was not the case, at the former even of these periods; and in this state

* This will be seen by the proceedings both in and out of parliament, under the reigns of Henry VIII., Elizabeth, and Charles II. Before the Commonwealth, instances of this sort were not rare; but after the restoration of Charles II., when it might be supposed that the misfortunes of his father would render his successor more circumspect, many instances are to be found in the reign of his sons, where the royal prerogative was stretched beyond due bounds.

† Such as the laws that were occasionally passed; treaties with foreign powers, sanctioned by parliament; the sale of Dunkirk, &c. &c., acts certainly not agreeable to the nation, and that were injurious to the best interests of the country. The length of time that elapsed before Charles II. called the parliament together; &c. &c. &c.

of affairs even thirty years, or rather less, the time between the restoration and the calling in of the Prince of Orange, effected a considerable difference in increasing the requisites for public opinion. However, we will now proceed to the reign of King William.

§ 2.

We repeat, the calling in of King William, and the abdication of James in 1688, were most important events. Without any internal convulsion; without the slightest struggle; without the loss or transfer of property, the nation, by its own act and will, became perfectly free, and obtained a constitution better adapted to preserve that freedom, and, at the same time, sufficiently strong in the executive to curb licentiousness and repress anarchy, than any other form of government that the wisdom, the ingenuity, or the experience of man has hitherto been able to contrive. That this extraordinary event was brought about entirely by public opinion, is evident on very slight consideration.

The Prince of Orange, or rather William III., was not possessed of those requisites for obtaining popularity, which have a powerful effect for that purpose. These qualities might have been useful to him on his arrival in England, but are in general of little importance to the sovereign of a free people. In despotic governments, where the monarch, although all-powerful, depends on the good will of a few generals and courtiers, such manners for obtaining and secur-

ing the good will of those around him, and for making the fetters of slavery sit as light as possible on the people, are perhaps absolutely necessary; but where the monarch governs in a free country, according to the laws, he is supported by public opinion, and whether more or less popularity is obtained by his manners, is of little importance. Such was, probably, William's opinion. He was reserved; not inclined to unbend into familiar intercourse, and unaccustomed to conciliate the affections of the different classes of society. He was, besides, a foreigner, scarcely acquainted with the language or manners of the English people, who, at that period, were probably more averse to foreigners, and more jealous of their interference in the affairs of government, than any other nation in Europe *. Whatever affection, therefore, was shown to the cause of William, could not have been owing to the popularity of his manners, or personal regard for a prince, with whom the people were, except in name, totally unacquainted. When he landed as Prince of Orange, he was not accompanied by a number of men sufficiently powerful to have withstood the forces of James in the field, much less able to have encountered the

* The jealousy of the English towards foreigners at that time is evident from the several acts of parliament, that were passed for their exclusion. In fact, where a constitution and a popular representation exist, an individual may obtain a considerable share of power; and public opinion, in that case, entertains more jealousy of foreign interference, than a despotic government: this may be observable in most states of Europe. In free governments, few foreigners are admitted; in despotic ones, they are not excluded.

opposition of the people; nor did any reasonable person imagine that he could withstand any protracted opposition. It follows, therefore, that no one joined him from apprehension of his power, or regard to his person, or from any fear of danger in case they remained passive; on the contrary, there was nothing to apprehend in not having joined him if he was ultimately successful, and every thing to dread in case of the reverse, from the vindictive spirit of James, which had shown itself after the unfortunate attempt of Monmouth and his party. Notwithstanding all these considerations, the Prince of Orange was joined shortly after his landing, wherever he passed, by the upper, the middle, and the lower classes of society, and even by those who were held in consideration and offices of trust, by the court and government of James,—so completely was public opinion set in opposition to that misguided monarch. The journey of the Prince of Orange to London resembled the march of a long-expected and beloved individual about to be elected the first magistrate of a free state. William found himself seated on the throne of England, not only without any difficulty, but by the acclamation of all the classes of society, to the exclusion of one of the oldest dynasties in Europe; and in an instant, all idea of the legitimate and hereditary right of the Stuarts to the throne of Great Britain, if acting against public opinion, was dissolved *.

* Whatever may be said by Hume, or asserted by others, as to the degree of liberty enjoyed by the nation under the Stuarts, or what they did for the benefit of the people, it is evident that liberty, under them, was most precarious, and that the constitution existed

The accession of William, and the peculiar manner in which he was placed on the throne, is dwelt on more than it otherwise would be, from its evincing, in a stronger manner than any other event that had before occurred in a civilized country, the influence and strength of public opinion, and how easily a well-informed people can in a quiet, yet firm manner, establish their rights, and secure their independence. It has been observed, that, taking the whole of Great Britain and Ireland, wherever the requisites for the formation of public opinion, that is, information, moral principle, facility of communication, &c., had been in some measure established, and thereby capital created, and a middle class of society formed, public opinion was strong, and decidedly in favour of William. This, however, was not the case in most part of Ireland, and in some parts of Scotland, which is evident from the attachment that continued to be entertained for absolute power and the House of Stuart. It was scarcely possible, at this period, for information or civilization to extend itself over a people solely occupied with the cultivation of the soil, almost exclusively in the possession of the upper class, so that the mass of the population formed an ignorant lower class; easily influenced by their prejudices, or by circumstances of a local nature.

only in theory. The unanimity of the country, when William landed, sufficiently evinces this to be the fact: let the reader himself refer to the history of those times in England, and to the acts extorted from parliament in Henry VIII.'s reign, and also to the end of that of James II., and Mr. Hume's assertion will, at once, be refuted.

This observation we may at a future period apply to other countries in Europe; and it will be evident that invariably the same rule holds, which is, that, in proportion as the requisites for the formation of public opinion exist in any community, in that exact proportion does it possess a constitution, and a liberal form of government. In the contest between liberty and the House of Stuart, this rule was very strongly exemplified, from what occurred in Great Britain and Ireland. If necessary to show this more clearly, it would appear from this circumstance: there is no doubt that Henry VIII. was a more tyrannical monarch than James II. in every respect; that he influenced parliament at his will; and that during the whole of his reign he was absolute in every respect. Suppose at this period a foreigner, like the Prince of Orange, had landed, and attempted, without an army, or without resources of any kind in the kingdom, to wrest the crown from Henry, every one will perceive that in such an undertaking he would have completely failed. Let us suppose even such an occurrence to have taken place at a later period, when more information was naturally acquired by the people; say in the days of Queen Mary, when she was in the height of her persecutions against her Protestant subjects, and decidedly in every respect guilty of more cruelty and extension of the prerogative and assumption of arbitrary power than ever James II. exercised, or had in contemplation: if, in the reign of Mary, a person similarly circumstanced as the Prince of Orange had made his appearance,

with the same claims and pretensions to the throne, he would not have been received in a similar manner, as the requisites for public opinion were not then sufficiently spread through the community, and the nation at large.

It seems, therefore, impossible, to draw any other conclusion from these events in our history, which are of too recent a date to be controverted, than that the liberal form of government, the state of liberty, and the constitution enjoyed by the English, did not in any manner depend on fortuitous events, on the alteration made by acts of parliament, or the concessions or boons of government, as from the requisites for the formation of public opinion being spread through the nation, and the people becoming sufficiently virtuous and civilized to obtain a constitutional form of government, and to secure this blessing when obtained.

The nation, under William, continued to augment in population, in wealth; and consequently the power of public opinion continued to augment in the same ratio: the middle class, especially, from this period may be said to have increased in an unusual proportion.

The power of public opinion having placed the Prince of Orange on the throne, the king's prerogative being secured within due limits, and the liberty of the subject confirmed by the establishment of the constitution, the people of every class lost all apprehension of their rights or their liberties being endangered from the throne, and began to feel that attachment to their sovereign which may naturally be expected from a free peo-

ple, who look on their king as their chief magistrate, who can enforce the due execution of the laws, and secure their persons and their property, but who has not the power of doing them harm.

Public opinion, thus satisfied at home, became only apprehensive of being deprived of their favourite form of government from external violence and foreign ambition, assisted by a few discontented individuals in the country. At that time circumstances took place to strengthen these suspicions, and to cause some acts of a harsh nature to be passed under such apprehensions *. Besides these acts, then passed, and supported by public opinion, the same feeling also encouraged and supported William, and afterwards Queen Anne, for a considerable time, in the prosecution of the war against France. When the population and warlike spirit of the French, and the ambition of their king, are taken into consideration, the anxiety of the English to support the wars then carried on, and the interest taken by the nation in the events of the campaigns on the continent, will be easily understood.

This apprehension of danger from the power of

* The exiled king was at that time in France, and kept up by his emissaries a correspondence with the Jacobites and disaffected throughout the kingdom. Many of the lower class, although they disliked his principles and feared his tyranny, yet felt compassion for his misfortunes and for his children. His interests were espoused by an ambitious and warlike monarch, who had shown his disposition by the seizure of Holland. It was natural for the English, who were his neighbours, who knew these events, and were jealous of their independence, to endeavour to secure themselves against similar dangers, by putting themselves in a warlike posture.

France, will be again alluded to, as it has been so much brought into action within the last century.

During the latter end of the reign of Anne, the advantages gained by the English and their allies were so great, and the power of Louis XIV. so much reduced, that these fears in the nation were considerably diminished: this feeling paved the way for the treaty of Utrecht*.

The English had brought the war waged against Louis XIV., to so favourable a termination, that the desire of keeping up the balance of power, for their security, and a sort of national vanity of holding that power, has, since that time, induced them to take a more active part in the affairs of Europe, than perhaps their situation or their real interests might require. From such an interference it would, perhaps, at this time, be difficult for England entirely to disengage herself.

The nation, at the time of the above treaty with France, was in favour of peace. Public opinion was desirous to render the country secure, but not to dismember France, or be the cause of her ruin or degradation. The power of the king of France was so much reduced, as to render him no longer an object of apprehension, and the friends of the exiled king were also much diminished in number and influence:—thus the

* Although the treaty with France was not framed against public opinion, for the reasons stated above, yet it cannot be denied that the ministers of that day concluded it with a precipitation and want of attention to the interests of the country, and of the allies, that was not agreeable to the nation; for which they were afterwards punished.

causes that chiefly induced public opinion in the nation to wage war against France being at an end, it was not probable that the sentiments of the community would further sanction the ministry of that day, in impoverishing the country for the sake of continuing hostilities that were no longer national, and in a great expenditure that could be beneficial to a few individuals only, but injurious to many. The causes that supported and induced a continuance of the wars undertaken by William were no longer in existence.

Nothing could be more decided than public opinion was at the death of Queen Anne, in wishing for the succession of the House of Hanover. George I. was as much called to the throne by the voice of the public, as William III. had been on his landing in England, and, probably, in a greater degree, as that sentiment was grown more powerful since the time of William. That public opinion during the reign of Anne was powerful, appears by many circumstances that may be obtained from the history of those times †.

* The ministry of Queen Anne, selected near the conclusion of her reign, were perhaps not very hostile to the Pretender. The conduct of Lord Bolingbroke, his well-known want of principle, his subsequent impeachment, his flight, and his entering almost immediately after into the service of the Pretender, seem to justify such a supposition. It does not follow that, because an idea of bringing in the Stuarts entered into the head of this person, that it was also adopted by his colleagues in office; but certain it is that no plots or machinations of any party could then have brought forward the Stuarts—so decidedly hostile was public opinion to the known principles of that family, and to their conduct whilst on the throne.

† In those days, the treaty of Utrecht caused a great deal of discussion in the country, which appears from the numerous publications on the Whig and Tory side of the question, at the close of

At the death of Queen Anne, and during her reign, political parties, particularly those of Whig and Tory, were much at variance. Some idea may be formed of the political hostility of those times, and of the state of opinion in the country, from the pamphlets and correspondence of that period—from the trial of Sacheverell*, and from other events.

It must be admitted, that during the century which has elapsed since that period, an increase has taken place in the requisites for the formation of public opinion throughout the community, beyond what could be imagined in the same causes by which they were produced being still in operation, and having extended themselves in every direction through the country.

From the Accession of George I., to the Death of George II.

When George I. and the House of Brunswick were called by public opinion to the throne of Great Britain,

Anne's reign, these prove that public opinion took a very lively interest in the discussions of the continuance of the war, and the peace with France and other matters.

* This trial shows, in a striking point of view, the feeling which then existed, when the cry was set up that the church was in danger. It must be borne in mind that the people (particularly the lower class) were still apprehensive of popery, and imagined that danger arose to the constitution, and to their liberty, if the church, which was the prop against the introduction of popery, was in any manner attacked. The motive by which they seemed actuated was not so much intolerance, as the apprehension of again losing their freedom, by the restitution of popery on the ruins of the established religion.

the country (a few years only having passed since the coming of William III.) was still more influenced by public opinion than at that period. George I. came under circumstances very similar to those already enumerated regarding King William. George I. came to reside amongst, and to rule over, a people who then disliked foreigners in an eminent degree. He was little acquainted with their language, or their manners. He did not understand, nor did he appear anxious to acquire that easy and conciliating manner, thought of so much importance to the head of the state in despotic countries, as likely to ensure the good will and affection of those about them, and to convey a favourable impression by their means to the people at large. George I. was not possessed of these qualities, nor did he require them. He was looked upon by the nation, and hailed by public opinion, as the constitutional king, and as such, met with the entire support of the community. The good sense of the nation made up for these deficiencies; which were, in fact, to the bulk of the middle class, a matter of perfect indifference *, as not coming under their observation.

* It has before been said, that, to a constitutional king, who governs by public opinion, the popularity of manners is not of the same moment as when the power of the sovereign is undefined and uncontrolled. In the latter case, the power of the sovereign mainly depends on an armed force, which is guided and influenced by its principal officers. For a despotic king to conciliate such men is undoubtedly a measure of importance: they must be kept in good humour, their fidelity secured, and their attachment to their chief confirmed, by favours, by courtesy, and by marks of attention and esteem. Hence, in despotic countries, the privileges granted to

The establishment of the House of Brunswick afforded a sort of security to the constitution, which could scarcely have been obtained, if that family had not been advanced to the throne. A family placed there by public opinion, were more likely, than any other, to act in a manner conformable to the spirit of the constitution *. Besides, that House, being the

military situations, not to property; hence the constant endeavours of those sovereigns to secure the good will of their generals and principal leaders. Let it also be remembered, that where despotism rules, less distinction and less formality between the king and his subjects may be permitted. The less difference is made by law between the several classes of society, the greater will be the assumed reserve of individuals: there is no other means of marking the difference of station.

* In making this observation, it is certainly not intended to insinuate that any individual must, merely because he belongs to the House of Brunswick, be more attached to liberty than any other. Every one knows that the feelings and passions inherent in human nature will, in the course of a few generations, be nearly the same in all; yet it must be allowed, that the peculiar situation in which the family of the House of Brunswick was placed; the circumstances under which they came to this country, make it their interest to preserve inviolate that constitution, for the formation and preservation of which they were called to the throne, and render it likely that they will both guard and preserve it. If the old dynasty had remained to this day, it is more than likely that they would never have entirely lost sight of the power exercised by their ancestors, which they would imagine was their right: in all probability they would have regarded our constitution with dislike and jealousy; and there can be little doubt, but that if a favourable opportunity had presented itself, they would have attempted to regain the power they had lost. Their secret attacks on the liberty of the people would have been incessant; and although they would have had little chance of succeeding against public opinion, yet the public mind would have been kept in a constant state of watchfulness, agitation, and apprehension. It must be owned that the supposi-

next in the line of succession, had indubitably the best claim to the throne; they were (as public opinion thought) better calculated than any other to maintain in purity the principles of the constitution. If at the time the Stuarts were expelled, a family had been placed upon the throne from amongst the natives of Great Britain, it is probable that, either from gratitude for the boon, or from fear of losing it, they might have been tempted to yield too much, and thereby have destroyed the proper equilibrium between the several orders of the state; for certain powers must remain in the executive, which if taken away would destroy the constitution, and give us instead a republican form of government. The family of the House of Brunswick not having at that time a direct claim to the throne, (as long at least as any of the Stuart family were in existence,) and being called entirely by public opinion, were more likely to avoid their example. As they were not placed in that exalted situation by any faction, by any popular commotion, or by any armed force, they had no debt of gratitude to pay to any particular party or faction, nor had they to apprehend the resentment or power of any set of men; but called upon, as they were, by public opinion, to fill the office of hereditary chief magistrates, it was, has been, and must be their interest, as well as their inclination, to conform themselves to the wishes of the country, and to preserve the support and approbation that the House of Stuart would have been allowed to remain, is absurd; we only make it, to show how the nation was circumstanced, and how much its choice was directed by public opinion.

bation of that feeling of public opinion, which has elevated them and will support them in their present situation.

The sentiment of apprehension from the military power of France and the ambition of her rulers, which had so long existed in the minds of the people in England, continued little abated during the reigns of George I. and George II. Perhaps it had augmented in strength from the days of King William, both from the greater extent and power of public opinion, and also from the apprehension entertained of the exiled family of James II., who still had some friends in this island, and who, supported also by the king of France, made him more dreaded by the nation. In consequence of this general feeling, whatever treaty or intercourse took place with France was viewed with suspicion by the community, and the pacification set on foot by George I. was not perfectly acceptable to the people, or entirely sanctioned by public opinion, or at least, if at first tolerated, did not long continue that sentiment*.

* The acts of Walpole, when minister, have been much censured, and condemned by many. It has, however, escaped the observation of those by whom this opinion has been entertained, that the moment the power and the prerogative of the crown were abolished, (which occurred on the expulsion of James,) there remained no other way to influence, left to a minister, than by interested motives. In a despotic government, where public opinion is unknown, fear only enables the government to be obeyed. In a perfectly free country, public opinion has the paramount influence, and all apprehension is at an end; much is it to be regretted that, in such cases, appeal to interest should be ever requisite.

It seems that public opinion was gradually increasing in proportion as its requisites extended through the community. The power of public opinion caused the issuing of general warrants about this time to be declared illegal; which is merely mentioned here, to show the gradual amelioration in our system of government, and the definition of the prerogative, and security of the person and property of individuals was gradually but steadily taking place. It will be unnecessary to refer to many particular events of this period, which can be known by perusing the transactions during the reigns of George I. and George II.*

§ 4.

If public opinion at that time was in favour of the continuance of the war, or rather of a renewal

* "To express the just sense this house hath of his Majesty's great concern for the balance of Europe, his vigilance to prevent a general war, and to maintain the security and commerce of his kingdoms."—*Address on the King's Speech, July*, 1736.

"The late successes of the Austrian arms in Germany, and the conclusion of an accommodation between the Queen of Hungary and the Elector of Bavaria, have laid the best foundations for a further happy progress. By these events, the influence of France in the empire is much weakened and diminished, and a way is opened to restore that strength and power to our ancient and natural allies, which will tend greatly to the re-establishment and security of the balance of Europe."—*King's Speech, May* 2, 1745.

The London Journal of the 24th of June, 1732, says, "Three hundred years ago, when all the lands in the kingdom were in the hands of the king, church, and barons, and the people were all slaves and beggars, then there was no trade; but now we spend every year vastly more money got by trade and labour, than the rents of all the lands come to."

of hostilities, it could only arise from apprehension of foreign power and foreign aggression, which, at that period, might also be connected with the fear arising from the return of the Stuarts, an idea strengthened, and encouraged, by the attempts made by the descendants and representatives of James II., in 1716, and also in 1745. The failure of these attempts proves that the House of Stuart was not supported in England, after the abdication of James, by any sort of feeling like public opinion. The result of these two expeditions fully exemplify and confirm this assertion. The Pretender, as he has been styled, had the entire support of the French court: he was supplied by them with arms, with some money, and had the means of a constant communication with his friends and adherents in Scotland and England. He might naturally have relied on the support of the Catholics in both countries, of the enemies to the reigning family, and of all the malcontents which may be found in a country where a change of dynasty has been effected; yet, notwithstanding all these expectations, it may be a subject of surprise that so few joined his standard. Probably this did not arise in some from want of inclination, but from fear of the consequences; but taken in any manner, it shows, what we are desirous of proving, that the general feeling and influence of public opinion was decidedly against the Stuarts. It is worthy of remark, that the chief, if not the only portion of the people who really espoused the cause of the Pretender, and who risked every thing in so doing, by volunteering

not only their services, but by supporting him with their persons and property, were precisely those who were under the control and direction of others, and not yet influenced by public opinion *. In the definition already given of public opinion, the requisites of which it is composed will, in a great measure, be found wanting at this time in the Highlands of Scotland. As yet industry and commercial activity had not penetrated into that mountainous country: this arose from its secluded situation, the badness, or rather total want of roads, the little communication, in short, the want of the requisites already mentioned †. The

* The best and most able supporters of the Stuarts in their attempts to recover the crown of England were the chiefs of clans, in the Highlands of Scotland, who still retained that feudal power over their vassals and clansmen, which the cheering rays of the British constitution are gradually dissolving. In those parts of the Highlands, where the cause of the Stuarts was most warmly espoused, the chiefs retained their greatest influence. No middle class of society existed; little intercourse, no industry, and little wealth was to be found, and, of course, no middle class of society, and no influence of public opinion. In other parts of Scotland, on the contrary, where industry, facility of communication, and civilization had made their appearance, there public opinion was in existence, and declared itself, as it had done in England, in favour of the Constitution, and the House of Brunswick, against the Stuarts.

† From these causes the chance of the Stuarts was hopeless from the beginning, and nothing but a sort of desperation could have induced them to make the attempts in 1715 and 1745. In these, particularly the last, they got together a handful of men, who fought with the most determined valour, which could, however, avail nothing against the general feeling prevalent in England, and, in the civilized parts of Scotland. So well aware was the French court of the state of public opinion, that they ventured none

colonies, and, consequently, the trade of Great Britain had increased considerably, the increase of capital and the middle class was evident, and the results in every respect such as have been stated more than once as arising from these causes.

There is no occasion to dwell further on the events of the reign of George II.

§ 5th.

From the Accession of George III., to that of George IV.

This is a period of importance, from the many events that have taken place during its continuance. In the course of this reign (George III.) civilization, information, and facility of communication, have increased in an extraordinary and unusual proportion. It will, perhaps, conduce to render our subject more distinct, if we pursue the same plan as before, which is, instead of following the thread of historical narrative, merely to notice the most important events as they occurred, and their consequences, as shewing the state of public opinion. We may, perhaps, be here allowed to remark, that although, as proved by the event, public opinion was sufficiently powerful in this country in 1688, to cause the revolution that took place, yet it was weak at that period, compared to its subsequent power; and it has increased considerably since that epoch, more

of their own troops in the undertaking, nor did they seem at any time to enter so heartily into the cause of the Stuarts, as they would probably have done, if they had imagined there was any probability of ultimate success.

especially during the period now under consideration. If a mechanical comparison may be allowed, a certain power in 1688 was able to effect a certain purpose. Since that time, this power is nearly doubled, but not being applied, and being in a state of quiescence, is not perceptible, and can only be judged of by inference.

A state of profound peace and perfect security from foreign aggression, is not, in England at least, one in which internal tranquillity is sure to be found, or where domestic satisfaction has always existed: probably, however, this does not arise so much from any feeling of public opinion, as from other causes not necessary here to mention.

In general those ministers have enjoyed the greatest popularity who have had the management of affairs during a war, and who, with a considerable expenditure, brought it to a successful termination. Such administrations have been more popular than those who kept the kingdom in a state of peace, and who studiously avoided causes of difference with other nations. Within a few years of each other, Sir Robert Walpole and Lord Chatham confirm the observation. The former fostered peace; the latter took every opportunity of entering into war. The one always exerted himself, and made it his policy to prevent the country from engaging in hostilities; the latter was equally ready and willing to accept the challenge and embark in the contest. The former was never, during the whole course of his administration, not even for a limited period, popular in England; the latter was,

probably, as popular as a minister can be in a free country, where the character and conduct of those who direct public affairs are closely watched; and where, from the state of parties and the nature of the constitution, their actions will always be animadverted on, by one party at least.

The disturbances that took place at the beginning of this reign, confirm this observation on that state of feeling which, however, must, on no account, be confounded with public opinion, being merely popular clamour, that may sometimes arise in a state of profound peace, or, indeed, under any circumstances.

Let us, however, pass over the petty occurrences that took place during the first years of this reign, and proceed to the consideration of the cause and result of the American revolution, and the war that arose in consequence. In so doing, it will be requisite to reflect for a moment on the state of public opinion, regarding that very important event, and how far the ministers of that day were supported by the public feeling, in the rise and prosecution of the war with the colonies.

We must request our readers not to forget our definition of public opinion, and to bear in mind that popular clamour, though confounded by some with public opinion, is not only distinct from it, but totally different in every respect. Contemptible as popular clamour may be, and really is, yet it is possible that, for a time at least, it may influence weak and timorous minds, more especially if confounded with public opinion by unthink-

ing persons. In alluding to the subject of the American revolution, it is certainly not intended either to censure or to exculpate the minister and the party by whose advice that event was brought about, and the war carried on. Our object is to trace public opinion, and to show its influence in our island; not to attack or defend the measures of one minister or of another, or the policy of this or that administration.

When first symptoms of discontent manifested themselves in America, when open resistance to the orders of the mother country were attempted, it cannot be denied that a feeling, tending to encourage the minister of that day to commence hostilities against the colonies, existed in parliament and in the country. It is possible, however, that this feeling, such as it was, did not emanate from public opinion, but was nothing more than popular clamour, supported and encouraged by the government, and by the wishes of a few individuals, and of mercenary politicians, who might imagine that the taxation of the colonies would assist the finances of the mother country, and husband her means and expenditure, which they absurdly thought might, like the Roman state, be supported by the produce of her offspring. That this was the case, appears from this circumstance, that if, at the commencement of the war, public opinion was not so distinctly pronounced in England as to prevent the minister from attempting to subjugate the colonies by force, yet such force had scarcely been employed before public opinion pronounced loudly against its continuance. This, it

must be observed, was shown by the country at a time when a feeling of hostility had arisen between the belligerants, when that temporary jealousy of rivalship and consequent dislike had originated, so likely to arise between states as well as individuals, who, being held together by the closest ties, had at once snapped them asunder, and engaged in a severe contest. That public opinion could not well be in favour of the conduct of ministers in carrying on the war, will appear probable when one reflects, that in every point of view the American war was impolitic and unjust. If attended with success, it could only be obtained by dint of exertions exceeding the advantage to be gained; and even if entire success had followed the efforts of the administration, how was it possible to preserve under dominion so extensive a country, whose population was hourly increasing in a great and unprecedented proportion. Supposing America to have yielded, such submission would, in all probability, have destroyed the English constitution. If she had yielded from force, and the right of taxation had been secured to the British minister, then the government would have possessed the power of levying a revenue at their pleasure; the crown might have become independent of parliament, and the balance of the constitution destroyed*. If a revenue could have been levied, and

* There is no doubt that the American war was thought by many in this country a politic measure: they imagined that, if these colonies were taxed, the pressure of taxation might be less felt at home. This would not be the first instance where people, as well as individuals, are led away by their interest, and conscien-

expended only in the colonies by authority of parliament, such a power might have proved dangerous, by extending the patronage of ministers to a degree incompatible with the security of the state.

If there was no prospect of subduing the colonies by force, then the conduct of the ministers by whom the contest was began was still more censurable. By such conduct, they incurred the responsibility, not only of all the blood and treasure thrown away in the attempt, but the risk of alienating the good will of a rising commonwealth, which, from similarity of laws, of language, and of descent, must have been inclined in favour of the parent state. It is needless to ring the changes on the impolicy of such a war with the colonies. We hope, therefore, we are not taking too much for granted, by saying that public opinion was not, after hostilities had commenced, in favour of the continuance of the war against American independence *. It was not long

tiously are induced to adopt an opinion. In a constitutional point of view, however, the taxation of the colonies, if carried to a certain extent, would have rendered the executive too independent of parliament.

* It may be admitted, we think, that popular clamour, supported by the wishes of the court and the influence of government, assisted the commencement of hostilities. Perhaps, if no war had been waged, and an amicable separation had taken place, such an arrangement would have been equally for the advantage of both parties. To imagine that so extensive a country as the United States becoming peopled and civilized, and possessed of the requisites for the formation of public opinion would remain for ever a colony of Britain, was out of the question. It was much desired by many in England, and also by a considerable number in the United States, (and if an amicable adjustment of the differences had taken place, it

before public opinion manifested itself on the subject of the war, even if, at the commencement, such a feeling had been dormant; and popular clamour only perceptible. Not only did the length and uncertainty of the contest, and the difficulties under which it was carried on, operate powerfully on the public mind, but it must also be taken into the account, that if, at the commencement of hostilities with the colonies, public opinion was not so decidedly pronounced against it, such silence might, and probably did, arise from an impression at that time general throughout the country, that the revolted colonists might be frightened into obedience by the parent state, when they witnessed the squadrons and the military display which the power of Great Britain was preparing to pour on their shores*. This

would have been attempted to be carried into effect,) that permission should be granted for the people of the provinces to send representatives to the British parliament. Now, supposing such an addition to our representative assembly to have kept pace with the wealth and population of the colonies, (and in no other manner would they have been satisfied,) such an augmentation must have proved injurious to our constitution, to the independence of parliament, and to the best interests of the country. An additional number of members, totally unconnected with Great Britain, poured into the house of commons, of different interests, and inhabitants of a country at several thousand miles distance, would have been an anomaly, and might have served as ready instruments for overturning the dearest rights and privileges of Britons; at any rate, it must be allowed that, by such an admission into parliament, both danger and inconvenience would inevitably have followed.

* That the entire separation between England and her colonies, if unaccompanied by hostilities, or by any unkind feeling in the people of each, would have been more beneficial to both, cannot be doubted. These two states, separated from each other by an immense ocean, yet speaking the same language, having the same origin, the same manners, and nearly the same way of thinking,

idea, however, evaporated after the conflict between the two countries had began in earnest; and after it was known that the colonies were plunged into all the horrors of a long protracted warfare, then public opinion rose above all other feeling, and loudly condemned the war as unnatural, and not likely to be attended with ultimate success. Then it was that the humanity and good sense of the people, uniting with public opinion, and the hopeless appearance of the contest, forced the government and ministers of that day into terms of conciliation with the United States *. This subject has been dwelt on longer, perhaps, than may appear necessary, but it was thought right to ascertain what really were in Great Britain the sentiments of the nation on that important event.

After this period, and the conclusion of a general peace, the country, as usual, turned its thoughts to the increase of its commerce, and to the means by which the industry of the people might be best rewarded, and the capital of the community increased. It does not appear that public opinion expressed itself in any decided manner (the riots, &c. &c., of 1780,

unable to injure each other permanently, but possessed of the power of imparting to each other all the benefits of a mutual exchange of commodities, an interchange of comforts and conveniences, ought to be cemented together by a feeling of good will. Such a sentiment must naturally exist and increase, and will, it may be hoped, not be lessened by any jealousy concerning maritime power or commercial rights.

* No virtues of the sovereign, however eminent, and no ability of the administration, however recognised, could stem the unpopularity of the American war.—*Historical Memoirs of that Time*, Vol. II., p. 81.

form no exception to the assertion; they were occasioned only by an ebullition of popular clamour,) for some time, as no event of importance called for its notice, the country remaining at peace for some years. In this state did things remain in Great Britain. It can scarcely be said that the business of the India Bill called for much of the public feeling, although, from what may be judged by a perusal of the publications of those days, such a proceeding was certainly not sanctioned in any manner, but rather opposed by whatever portion of public opinion manifested itself on the occasion.

Perhaps, public opinion might be a little roused occasionally by domestic or foreign events*, but these were not of so decided a character as to render it necessary to notice them here. The troubles that originated in Holland, were cast into the shade by the important events which occurred in France, previously to the breaking out of the Revolution in that country. Let us for a moment pass over domestic occurrences †;

* Such as the dispute between the stadtholder and the states-general, in a question where each party thought their privileges were invaded.

Also in the occurrence of the impeachment and trial of Warren Hastings. These events, though occasioning much interest at the time, were not of that importance as to rouse the public opinion of the country, or to call it forth in any remarkable manner.

† The India Bill, which was agitated about this time, although unimportant at present, yet deserves to be noticed, as its fate proves how little a faction in the House of Commons, even if headed by the minister, can achieve, when unsupported by public opinion. In his attempt to carry this bill through the House, the minister lost entirely the support of that portion of public opinion which, had he preserved, would have enabled him, assisted by the

and proceed to the consideration of the public feeling in England, with regard to the Revolution likely to take place in France, and to extend to other parts of Europe.

Before entering into the subject, we may remark, that public feeling at this time (as indeed it has always been in England) was very much in favour of the establishment of liberty on the continent. To this sentiment, however, there may be said to be one exception. In the disputes between the stadtholder and the states-

majority he possessed in the Commons' House, to remain minister, even in spite of opposition from any quarter. That the nation felt deeply on the subject cannot be doubted. "The feelings of the nation were wrought up to a high pitch of solicitude and curiosity, by the subsequent proceedings of parliament relative to India."—*History of the Reign of George III.*, vol. IV. p. 113.

The great alteration that took place in the members returned, after the dissolution of parliament in 1784, may, of itself, prove the unpopularity of the attempt made by the former minister (Mr. Fox) to carry the India Bill. The conduct of his political antagonist, in not dissolving parliament as soon as he might, and as many would have done, on that occasion, but in waiting until the public mind was fully sensible of the question, and prepared for such an event, shews how fully aware he was of the importance of public opinion, and how desirous he was to conciliate such a feeling. By delaying the dissolution to the latest moment, the nation was satisfied that such a proceeding was only adopted from the necessity of the case, and that it was impossible to carry on the business of government with the same parliament which supported the coalition ministry. "The India Bill, concerning which the public judgment was at first suspended, had now, by a multiplicity of able and popular tracts industriously circulated, been completely developed and explained; and it was almost universally condemned as a measure in the highest degree arbitrary and oppressive, and with consummate artifice calculated to perpetuate the power of our administration who were the objects of the national detestation."—*History of the Reign of George III.* vol. III. Book 21.

general in Holland, the British cabinet supported the tottering power and the hereditary rights of the Prince of Orange against the sentiments, almost universal throughout the united provinces, in favour of the states-general. The same cause, also, was espoused by the King of Prussia, who, probably, was actuated as much by political feeling, as by the near connexion that existed between him and the stadtholder. In all this it is singular, that public opinion in England should not have been more powerfully proclaimed in favour of the states-general in Holland, who were contending for liberty. This apathy in public opinion here may, perhaps, be accounted for, by the apprehension that still existed of the ambition and power of the King of France, and the consequent risk of opposing his enemies, the stadtholder and King of Prussia, who were our allies on the continent *. There is nothing, in particular, to notice further at this time: the subsequent period we come to, is that eventful one, the breaking out of the Revolution in France. Concerning the Revolution itself, we ought not at present to say much, as it properly belongs to the state of public opinion in France, which will be considered in its proper place; but we may be occasionally obliged to notice it under the present section, as it deeply interested this country: some allusion to it, therefore, may be necessary, to assist

* A writer on the events of those days observes, "A proof that England was still jealous of the power of France under her monarch, and of the maritime influence of Holland, is the support she gave to the King of Prussia in his unwarrantable attack on Holland in 1787."

us in tracing the state of public opinion in Great Britain. If one reflects on the situation of the two nations, on the facility of communication that takes place, on the mutual convenience and assistance that each finds in its intercourse with the other, it will appear evident, that (unless when the two countries are unfortunately at war, when, of course, all direct communication is at an end,) on any public event, particularly of a political nature, the feeling entertained in one country must create a very powerful corresponding sentiment in the other.

At the commencement of the French Revolution it cannot be denied, that it was much favoured by public opinion in Great Britain. Many circumstances created this feeling. A great nation enjoying happiness and freedom, naturally desires that others should possess the same advantages; perhaps, also, more selfish motives might operate. It must be admitted, that, for a considerable length of time, a feeling had existed in England, of dread of the power of France, arising from the power and warlike spirit of that people, and the ambition and unprincipled spirit of her rulers. It might be supposed, and with some sort of probability, that if France were possessed of a free and representative government, the ambition of her rulers might be kept within bounds, the nation would turn its attention to domestic concerns, and acquire habits of peace and industry. These, and such like considerations, probably influenced public feeling here. Besides, the English constitution afforded so admirable a

model, and the example of America, in assisting whose emancipation France had taken some part, was so powerful, that many amongst the most enlightened persons in this country imagined the French Revolution would proceed in a quiet manner; and that, after a few troubles, the government would settle either in a republican form, or in a monarchy with limited powers. On this subject we can say more, when we consider the state of public opinion in France, whose middle class was not sufficiently powerful at that time to effect such an object. It must be allowed, that the public events that took place in France, produced a corresponding sensation in this country. About the year 1790, certain societies were established in the metropolis and in the chief towns in England, and also in Scotland and Ireland, which societies, or their leaders at least, were inclined to form their opinions, found their example, and draw their support, from the fiercest revolutionary leaders in France*. As yet, public opinion here was not pronounced on the subject; it was, as we have observed, favourable to liberty, and wished for a change in France.

* These societies were formed by a few factious and discontented individuals, who had everything to gain and nothing to lose; who were resolved to tread, as closely as circumstances would permit, in the steps of the revolutionary government lately established in France.

The revolutionary tribunals in France attempted to destroy, not only the upper class of society, but also the middle class, which in that day was not, of course, what it is at present. A lower class by itself, inevitably leads to a despotism, which took place in that country, when the republican system was at an end.

which might establish all the advantages attendant on liberty in that country. Thus far it cannot for a moment be doubted, that public opinion in England was favourable to the French Revolution. When, however, it appeared to be the wish of the leaders of the mob, and of the revolutionary tribunals in France, not only to upset every establishment sanctioned by custom, but to sacrifice entirely the upper and middle classes of society; when those sanguinary proscriptions began, which have in some measure stigmatized the name of revolution; when acts of the most atrocious nature, both public and private, were perpetrated by the existing government; when law, justice, and order were abolished; when the republicans openly avowed their determination of attacking and overrunning those countries, that would not adopt the same principles; and when either complete anarchy reigned in France, or the despotism of a lawless and infuriated populace; then it was that public opinion in England began to view the revolution in France in a very different light from what it had done at first, and to look on the proceedings of the revolutionary tribunals with dread and abhorrence.

The government of that day in England, foreseeing the danger to this country from a further communication with the continent, and apprehensive that the lower classes might imitate the example of the same class there, took advantage of the feeling that existed in the upper and middle classes, and succeeded in breaking off all communication between the two countries by

declaring war, and by raising popular clamour against republican principles.

After hostilities had began between the two nations, the old feeling, so prevalent in this country, of jealousy and apprehension of the warlike spirit and power of France, was renewed, and was augmented perhaps more than ever by the extraordinary success that attended the armies of the republic on the continent, assisted greatly by the spirit of equality, and fraternization, and insurrection, which the French encouraged amongst the lower classes, wherever they made their appearance. When we look back to that period (say 1792) from the present moment, unprejudiced by any circumstance passing at this time, likely to influence our judgment, it must be confessed there seems to have been then some ground for apprehension *. When the war was declared, and hostilities began, public opinion might be said to be wavering; but as hostilities proceeded, it became unanimous, and threw that strength into the hands of the minister, who had himself promoted the measure, that enabled him to carry on the war with a vigour proportionate to the danger arising from the

* Had the intercourse that was existing between the two nations, and the active correspondence which was carried on by the secret societies formed in Britain, with those in France, not been interrupted by the war, there is no saying whether the spirit so prevalent in France might not have spread itself in Great Britain and Ireland, amongst the lower classes. In Great Britain the middle classes were so powerful, that it would have been of little consequence; but in the latter country, very considerable dissatisfaction prevailed, and if the expression may be used, it was not possessed of the same strength of public opinion that existed in this island.

ambition, the military power, and the revolutionary doctrines with which the French government assailed its enemies, and often overcame before the contest was commenced.

During the beginning of the French revolutionary war, that is, until the peace of Amiens, it is beyond doubt that public opinion supported its prosecution, not only from the causes mentioned, but also from others of minor importance.

This is further confirmed by referring to the publications of that time, and to the various demonstrations of public feeling on the war.*

* The policy of Mr. Pitt was to break off all communication between the two countries by war; and by this means, the introduction of revolutionary doctrines might be shut out, much in the same manner as a contagious distemper. To be supported, it was found necessary to renew as much as possible the old spirit of rivalry, jealousy, and national prejudice: these attempts were much assisted by the ambitious designs of the revolutionary government in France, which, certainly, by its conduct, provoked the commencement of hostilities. At this time, when one may look back to past events with some degree of coolness, it seems doubtful whether (if no war had taken place) the French revolutionary ideas and principles would have been introduced amongst the lower classes. The opposers of Mr. Pitt's measures imagine the war was unnecessary, and that no danger was to be apprehended; his supporters thought otherwise. The latter opinion prevailed, and was sanctioned for the time by public opinion. At this day it is difficult to determine the question. The middle class in England is so powerful, as to leave little cause for apprehension of any discontent in the lower class. The same is not the case in Ireland: there might be danger, therefore, to the latter, if not to the former, in preserving peace with the republic, but little or no apprehension could reasonably be entertained in England, where the middle class was so numerous.

It must not be concealed, that, at this period, other motives, rather of a selfish nature, might influence those classes on whom public opinion chiefly depends. By the measure then adopted of suspending the payments in cash from the Bank, an extraordinary encouragement was given to the issue of a paper currency, and the value of produce and the rent of land rose in an unprecedented manner. By the naval superiority of Great Britain, and the little attention that was at that time bestowed on maritime affairs by her enemies, the commercial interests of England were also benefited in an unusual manner: thus these two great interests in the nation, finding an advantage in such a state of things, and their prosperity communicating itself through a thousand different channels over the community, made the war popular. There can be little doubt but the benefits thus obtained, together with some naval victories, confirmed the feeling of public opinion in favour of the measures pursued by government, and enabled it to carry on the war for such a number of years.

When parliament was called together in December 1792, the king, in his speech, endeavoured to confirm and lead public opinion, and nearly all the acts of the administration had a similar tendency. Popular clamour also assisted. All these united, caused a strong sensation in the country that did not subside for a considerable time *. Most fortunate was it for the security and

* The following sentence was contained in the king's speech alluded to above:—"I have carefully observed a strict neutrality in the present war on the continent, and have uniformly abstained

continuance of our constitution, that the leaders of the revolution and the directors of the French government proceeded as they did, and evinced what their ultimate object was, both before and after the declaration of war with that country. We have already said that public opinion in England was, in the beginning, not unfavourable to the first attempts for the establishment of liberty made in France. If the promoters of the revolution in that country had carried on their proceedings with prudence, with humanity, and with the real love of liberty which was always in their mouths, but seldom in their actions, there is no saying how far their example and their conduct might have influenced the lower classes, if not in England, at least in other parts of the empire: however it turned out (fortunately for the internal security of the country) otherwise. The conduct and principles of the leaders of the revolution set public opinion in direct opposition to them. Popular clamour also arose, and the minister of the day found no difficulty in obtaining those supplies from the country requisite

from any interference with respect to the internal government in France; but it is impossible for me to see, without the most serious uneasiness, the strong and increasing indications which have appeared there, of an intention to excite disturbances in other countries, to disregard the rights of neutral nations, and pursue views of conquest and aggrandisement, as well as to adopt towards my allies, the States General, measures which were neither conformable to the laws of nations, nor to the positive stipulations of existing treaties. Under these circumstances, it may be right to have recourse to those means of prevention and internal defence, with which I am entrusted by law, and to make some augmentation of my naval and military force."

for the exigencies of the war, and for its further continuance.

Thus did public opinion sanction the continuance of the war until its termination by the treaty of Amiens. At that time there was a feeling in the country not unfavourable to peace. The public mind looked on the revolution in France as at an end. It was supposed that the French were now settled, having an established form of government, and being directed by one individual, elected chief consul, who had sufficient power and influence to keep himself at the head of affairs. Such being the case, there was no further object in continuing hostilities, no purpose to gain, no end to answer; if persisted in, the war might be carried on to an interminable length. Such seems to have been the public sentiment, after the elevation of Buonaparte to be chief Consul, and such were the feelings in the nation that probably induced the administration to think of peace.

After the treaty of Amiens had been ratified, considerable satisfaction was manifested throughout the country.

After some time, however, public opinion was induced to alter, when the fixed and determined hostility of the ruler of France towards Great Britain was observed. Many of his acts were calculated to injure the trade, and affect the commercial prosperity of this country. The treaty of peace was nothing more than an armed truce, and nearly the same expenditure incurred as during the war, without any corresponding ad-

vantage. Then it was that public opinion gradually changed; the same feeling returned, and the same apprehensions of the ill will and power of the French government, that were entertained at the beginning of the revolutionary war. The prosperity, and even the safety and political existence of the country were thought to be at stake; and to renew the war, under existing circumstances, was deemed the most secure, the most honourable, and the wisest determination*.

The executive, supported by this feeling of public opinion, lost no time in recommencing hostilities; at that period, however, a fresh war did not seem to accord with the wishes or interest of the French government.

Great as were the apprehensions entertained of the power of France in England, at the close of last century, and in former times, these were much increased when the ambition of Buonaparte, and the powerful means at his disposal were better known, and his talents, not only for war, but for politics and government, were duly appreciated. As the gigantic means at Napoleon's disposal (now become Emperor) con-

* It may be imagined that, instead of describing the public opinion prevalent, we are laying down merely the sentiments of the administration of the day. That this was, for a considerable time, the opinion entertained by the chief promoters and advisers of the war there is little doubt; but it does not appear to have been the sentiment of public opinion (usually anxious for peace) until after certain acts of the First Consul had made his sentiments manifest, subsequently to that treaty. Then it was that public sentiment perceived his aim at universal empire, and consequently his wish to destroy the political system of Great Britain.

tinued to increase, and his determined and persevering endeavours to reduce the commercial influence of Britain, then it was that public opinion in this country became still more opposed to his ambition, which feeling continued to increase in proportion to the apprehension that he excited.

The intended invasion of England did not lessen the apprehensions of the country, or deaden the intensity of public feeling. The immense contributions in aid of the war that proceeded from all quarters, and the voluntary enrolments that took place of all classes of people to defend their country, which formed nearly the entire of the male population in the nation, capable of bearing arms, into military bands, sufficiently evince the strength of public opinion at that period.

Without this support from public opinion, no government over a free people could have found it possible to impose or to have obtained payment of the taxes then laid on; yet were these imposts not only not opposed by the country, but paid willingly, so decided was the conviction of public opinion, that resistance to the power and aggressions of the Emperor of the French was an object of paramount importance. The exertions of this country were unparalleled, and serve to show, during the continuance of the contest, what can be effected by public opinion, and the resistance capable of being made by a free, civilized, and virtuous people against foreign aggression. It is unnecessary to enter into the particulars, or to dwell on the details of the events of the war; they are well known to all,

and deeply impressed on the minds of those who felt anxious as to its result. These events are only alluded to here, to illustrate the power, the vigilance, and the paramount influence of public opinion in this country. It may at the same time be observed, that from the peculiar situation of Great Britain, the pressure of taxation was not so much felt by all classes as might be imagined*, and many were benefited in a great degree. This was occasioned, in some measure, by the extension of paper currency, the monopoly of the carrying trade, the immense loans, and consequent expenditure, and other causes not necessary to enumerate. To sum up, therefore, the state of public opinion in England towards the French Revolution, it may be said, that, on its first breaking out, public opinion here was favourable to such a change; but after the ambition and cruelty of the first republican government had manifested itself, and the superiority obtained by the lower class and its demagogues in France over the upper and middle classes, and the judicial murders committed to seize their property, then it was that the revolution was decidedly opposed by public opinion in Great Britain†. These seem the grounds of the cause

* In fact the mass of the people did not suffer so severely as would seem probable. The country was not overrun by a hostile force; industry and commercial activity were not checked, but rather increased; and although taxation was high, the produce of land, and of every article of manufacture, being paid for in proportion, the war, except to fixed incomes, made but a trifling difference.

† During the republican war, and afterwards, when hostilities

that public opinion was so decided, although by some it has been insinuated that more selfish and interested views influenced the prevalence of that sentiment, which, as we have observed, were the increase in the value of produce, and, consequently, of rental, and the profits from land, the monopoly of manufactures, and of the carrying trade; and the additional demand through the country, supported by the loans raised, and the great expenditure that arose in consequence. It is probable that these causes did not render the war more unpalatable to the nation; but it cannot, for a moment, be imagined that such sordid motives could influence a community in which the requisites for the formation of public opinion were so general as they were in Great Britain. Not only was it from apprehension of the power of France that public opinion opposed its rulers and supported the war, but it may also be said, that other circumstances, of a secondary description, favoured this feeling, such as the impression that no faith could be reposed in the alliance or the

were renewed under Napoleon, then First Consul, after the peace of Amiens, the exertions of emissaries in Great Britain, to spread amongst the lower class the doctrines of equality and of a division of property, were unremitting. It may, perhaps, appear singular, that these were attended with no better success, considering that such sentiments are always palatable to the lower classes, particularly when ignorant, and in distress, and considering also the activity of the agents employed. It follows from this that the power of public opinion, and of the upper and middle classes, must be very considerable; and it also shows the small power that remains in the lower class, in a civilized country, where public opinion is powerful, and what little danger there is of any revolution taking place affecting the several classes of the country.

protestations of friendship made by their government, who were jealous of the commercial prosperity of their country, and ready to take every advantage that presented itself.*

It is worthy of remark, that so decided was the state of the public mind, and so fully convinced were the people capable of forming or giving strength to public opinion of the necessity of opposition, that notwithstanding the danger of invasion, notwithstanding the uninterrupted success that attended the arms of Napoleon, by which the countries that were circumjacent to France became either her subjects, her tributaries, or her dependents, together with the little chance that existed of destroying or even of lessening the power of the Emperor Napoleon, an ideal which might at that time be treated as a chimera; not one sentiment emanating from public opinion in this country was favourable to peace, unless such terms could be obtained as would secure us, in

* What is here said, does not, of course, apply to the people of France, but merely to their rulers at that particular period. By some it has been asserted, that if another course had been followed with regard to France—if the English had conciliated instead of irritating, if they had been anxious to preserve peace, instead of entering into war, the state of affairs, and the progress of the revolution in France might have been different. This would be just enough if the revolution in France had continued as it began, that is, had desired merely to establish a constitution and secure liberty; but after some time, this was found not to be the object of the leaders of the lower class, as will be stated in another place. The war in which this country was involved for nearly twenty years, was certainly to be deprecated, but it seems that a peace with the then directors of affairs in France would have been uncertain, and, perhaps, dangerous.

every respect, not only from the open attacks of the ruler of France, but also from any more covert and insidious proceedings on his part against our credit and national prosperity. This sentiment continued in Great Britain from the time of the rupture of the treaty of Amiens, until the end of the contest, acquiring occasionally more power from particular circumstances, such as the invasion and revolution in the Peninsula, and other events.

After the victory obtained by the French at Austerlitz, the situation of Great Britain was not such as to excite sanguine expectations for the future. The numerous armies, the acknowledged talents, military skill, and formidable preparations of the Emperor Napoleon, together with his well known hostility to the commercial and naval superiority of Britain, were sufficient to excite greater apprehension than had perhaps been felt at any time in this country since the dawn of civilization and public opinion *.

Although public opinion in Great Britain was de-

* Although at this time public credit was great, and a paper circulating medium assisted much the wants of the people, and eased them from the pressure of taxation, yet the depreciation of the currency, the dearness of provisions, the impossibility of going on continually in the system of loans, and the spirit of discontent in Ireland, were enough to excite apprehensions. To this may be added the union of Spain with France, and the junction of the squadrons of those nations, with other circumstances not relevant to our subject to mention here. However, the spirit of the people rose superior to all these difficulties, and public opinion was decidedly pronounced in favour of a war, to preserve national independence. The victory of Trafalgar restored, in some measure, confidence to the public, and put off for a time the probability of invasion.

cidedly for a continuance of the war, which was strengthened by Napoleon's avowed hostility, his ambition, and want of faith and other causes, and there was little prospect of ultimate success; still, however, the sentiment in the nation was decided to continue the war, at all hazards and under all circumstances. Perhaps it is owing to this strength of determination in public opinion, at that period, that the security of this country, and the emancipation of Europe may in some measure be attributed *.

The event of the revolution in Spain against the king set on the throne by Napoleon, was of considerable moment, by strengthening public opinion in this country against him, and in other parts of Europe. The causes of this occurrence it is not at present our business to investigate—this may be reserved for another place; it is alluded to at present, merely as connected with the subject of public opinion, and as likely to influence public opinion in every civilized state, against the Emperor of France. In every respect this change in Spain was important, and it operated powerfully on the people of England †. It kept up public sentiment,

* If Great Britain had made peace with Napoleon, and accepted the terms dictated by him after the battle of Austerlitz, it seems probable that his attempt in Spain would have been successful; that Russia might have wanted the inclination, if not the power to withstand his demands; and consequently that subsequent hostilities between Russia and France, and the memorable expedition to Moscow, which ended in the destruction of the French army, and the subsequent downfal of Napoleon, might not have occurred.

† Previously to the attempt to place the crown of Spain on his brother, Napoleon had enjoyed, through the means of Spain, nearly

afforded new hopes, and raised fresh expectations for the favourable termination of the war, which had continued so long as to give great uneasiness. The loss of the wealth from America might be felt by the ruler of France; but the want of this was a feather in the scale, compared to the injury his cause sustained, and the loss he suffered from the circumstances attendant on the invasion of Spain, in the sentiments of the civilized portion of Europe, where anything like public opinion was to be found, and even in France. The impulse given to public sentiment, already so settled in Great Britain, was greatly beyond what can at present easily be imagined; which arose not only from the evident injustice and want of faith and adherence to treaties apparent in the invasion of Spain, but also from the prospect of advantage likely to result to the commercial activity of England, both by renewing its intercourse with Spain, and by the prospect of opening a free trade with Spanish America, an object before unattainable, though long and ardently wished for by the people of this country *.

the whole of the wealth that flowed into the peninsula from the possessions of Spain in America.

* The time is not so far distant but many may call to mind the effect produced on the several classes of society in England, at the resistance of the people of Spain, chiefly however the lower class, against the attempt of France on the peninsula, in time of profound peace between the two nations, and under the appearance of friendship. It seems surprising that, in the whole of the transaction, Napoleon should have evinced so entire a disregard to the sentiment of public opinion, which was, in consequence, strongly excited against him, not only in Great Britain, but in every state where the requisites existed for the formation of that sentiment.

From the conduct of Napoleon towards Spain, one might take it for granted that he was not fully sensible of the influence and power of public opinion: this, however, is not the place for any reflections on such a subject, which can be treated more fully, when the state of public opinion in France is taken into consideration.

In this manner did the public opinion in this country enable the government to continue the war against France, although it was evident the resources of the country were inadequate to support the extraordinary expenditure thereby occasioned, fresh loans every year incurred, which it was evident to every one could not be continued for ever. Thus hostilities between the two countries continued without the appearance of a termination, until the French Emperor undertook his gigantic expedition to Russia in 1812, the ultimate result of which is so well known *.

After the first abdication of Napoleon in 1814, the entire overthrow of his army, and his again resigning the throne in 1815, and the accession of Louis XVIII. to the throne of France, public opinion was likely to undergo an entire change, with regard to future hostilities with that country. The apprehension entertained for upwards of a century, by England, even for a much longer period, of the possibility of invasion from

* It is foreign to the subject to dwell on the sentiment excited by the invasion of Russia by Napoleon; it was similar, but more powerful, than the one excited by the attack on the independence of Spain.

France, and of the ambition and love of conquest of her rulers, seemed to subside, from the following natural conclusion, that if France, during the height of her power and military fame, under Napoleon, an individual possessed of greater means, and more ambition and military talent and hostility to this country, than was likely to fall, for some ages, to the lot of any other ruler, was unable to effect an invasion of England, or to check permanently her commercial greatness, there could exist but little probability, for the future, that these events could be brought about, consequently that this country had no cause to apprehend danger from France *. Public opinion in Great Britain being divested of this apprehension, a considerable and important change was likely to take place in the future politics of this country, which, if not perceived at once, or at the present moment, may be observed at no distant period. All apprehension in public sentiment having ceased, the means of inducing the country to enter into hostilities with France would be wanting, and the system so long

* Although at the restoration of the Bourbons, France lost part of the territory acquired by her in the previous war, and may be considered as less powerful, from that circumstance, than under Napoleon, this does not occasion the change in public opinion, so much as the sentiment that all dread of future invasion may be considered at an end, from the causes stated above. In the last war the possibility of failure prevented the attempt from being made; there is no probability that, at a future period, such would be attempted, when the means were diminished, and the probability of ultimate success not so great.

adopted by the government, and sanctioned by public opinion, would be at an end. The consequence will be, that the watchfulness of public opinion, not being occupied by foreign hostilities, is directed with greater attention to the internal state of the country, to an acute and jealous investigation of every occurrence at home connected with the public service. It is possible that this turn of public opinion may not become apparent for some time; it is possible that unforeseen political occurrences may arise on the continent or elsewhere, that may cause its operation to be for a while suspended*; there is little doubt, however, but that such will be the ultimate direction of public opinion. Within the period which we have been considering, from the beginning of the reign of George III. to his death, very great advances have been made in Great

* It might happen that another power should arise in Europe to excite the same apprehension of invasion in England, and the same jealousy of public opinion that was felt with regard to France some years ago. There seems, however, little probability of this being the case, and it may be looked upon as a theoretical supposition. Little apprehension or reasonable grounds seem likely to be created in England from the danger of invasion by any foreign state. Great Britain seems placed in that desirable situation, that she can neither receive dominion from, or inflict it on, any state of Europe.

Thus public opinion in this country being withdrawn from that apprehension so long entertained, of invasion from France, may resemble, in some respect, the mind of an individual, which if it directs, for a considerable time, attention to any particular object, and then withdraws, is apt to be directed with the same intensity on some other.

Britain, in Europe, and in other parts of the world in the increase of the requisites for the formation of public opinion, which will be the subject of the next chapter, together with the present state of that sentiment in this country.

It is impossible for an unprejudiced person who runs over the history of the events that have occurred in this island from the dawn of public opinion to the present time, not to observe how gradually and almost imperceptibly, yet how powerfully, the influence of public opinion has been advancing; that the upper class, and particularly the middle one, have increased in the requisites of public opinion before mentioned. Taking a retrospective view, it is easy to perceive that four hundred years ago there was no public opinion in England; that the king, at that time, was absolute, the upper class ignorant, the small middle class, if any could be said then to exist, was equally so, and the lower class was so ignorant as to be nearly barbarous, and poor in the extreme. Three hundred years ago, taking the entire community, there might be a shade less of barbarism and ignorance, which was, however, still very considerable. The upper class was destroying itself for the colour of a Rose, and civil war was raging through the country for no purpose, and with no object in view. These wars of the Roses show the state of the people, who were influenced by two factions in the upper class to carry on a war nearly of extermination for the houses of York and Lancaster, concerning whom the lower

class could not possibly feel the slightest interest, which was only showed the state of the times, and the influence of the upper class over an ignorant and half-barbarous population. After this, one may observe the dawn of civilization making its appearance; a sense of religious feeling manifesting itself in the country by the reformation, with a gradual, but slow tendency towards civilization. Within less than two hundred years, an evident expression of public opinion is discernible in the community. We see parliament opposing the unlimited prerogative of the crown, desirous to confine it within certain limits; and we observe that, in these endeavours, that assembly is supported by the community influenced by public opinion that manifests itself, and seems resolved to secure a constitution, and to establish liberty on a firm basis *.

At the distance of a hundred and thirty years, public opinion, in the country, is sufficiently powerful to succeed in expelling, with nearly the unanimous voice of the nation, the old dynasty and family of the Stuarts, and establishing security of person and property, and liberty and a constitution on a firm basis.

At a later period, within little more than a century, public opinion calls on the house of Brunswick to secure the constitution and liberty already established: civili-

* Although this desire of public opinion might be suppressed for a time, by the army and the power of Cromwell, there is no doubt that it existed strongly in the people, as appears sufficiently by the subsequent expulsion of James II.

zation, the middle class of society, and the requisites for the formation of public opinion extend themselves through the country in every direction, which, yearly augmenting, we behold, at the present day, public opinion all-powerful in Great Britain.

Such seems to be the outline of what has been traced in the preceding pages concerning the rise and progress of public opinion. That this sentiment will, with the civilization of mankind, extend itself to every part of the globe, is scarcely a matter of doubt. Whether it becomes more or less powerful in other countries than Great Britain, or in whatever places this sentiment may become prevalent, it cannot be denied that to England belongs the honour of having set the example to the other nations of the world, by being the first community in which the requisites for public opinion were established. Fearful of being tedious, we have passed over, in a hasty manner, the principal events in our history, and have merely alluded to those we thought necessary for the purpose of marking the progress of public opinion. We hope enough has been quoted to point out clearly its progressive increase: it was not our wish to go beyond that point. To have entered more minutely into the details of the English history might have elucidated the subject more fully, but might also have increased the number of our observations beyond proper limits, and thereby have created a sort of confusion.

In the next chapter it may be necessary to enter into some detail, and to show more clearly what are

likely to be the effects of late improvements and discoveries on the state of society. There will be no necessity to have recourse to dry statements of historical facts; not perhaps very entertaining, but without which it was impossible for us to make ourselves understood, or to trace distinctly the increase of public opinion from its dawn to the present time.

Chapter IV.

§ 1.

On the Present State of Public Opinion in England.

We must request our readers not to forget the definition that has been given of public opinion, and also to bear in their memory what has been said of the relative proportion of the different classes of society towards each other; and that, in proportion as the middle class of society increases, so does (in most cases) public opinion. On looking over the historical accounts of those states in Europe that are capable of affording anything like an example, this assertion will be confirmed, and may be adopted as correct without hesitation, even if it were not evident from the connexion with the civilization of the community, from the definition of public opinion, and from the examples already given in what has been said in the reflections on England to the present period. Since the peace with France, several causes have combined to increase the middle class of society in this country in a very unusual proportion,—in a much greater ratio than could be anticipated from a retrospective view of the English history; consequently, public opinion has, of late, gained, and is possessed at this moment of very great additional power.

The leading causes of this are:—1. The change that the burdens imposed by a long and expensive war have occasioned in the currency, and the consequent alteration in the value of money and of landed property.

2. The improvement that has taken, and is daily taking place in machinery, and its substitution for manual labour of every description, which may be called the powers of machinery.

Other causes may also operate to a certain extent, but they are not to be compared to these two that we are about to consider.

With regard to the first of these; 1st. The change that the burdens imposed by a long and expensive war have occasioned in the currency, and the consequent alteration in the value of money and of landed property.

The late war could not be continued against the gigantic power of France, without great sacrifices on our part *. We were principally enabled to make these exertions, by means of the immense credit that our former good faith and punctuality enabled us to esta-

* It may be worthy of remark, that the war was carried on by Napoleon at a much less expense than it was by us. In general his armies only required to be fitted out, and when marched into a foreign country, they were paid, clothed, and supported by the state in which they found themselves. England, on the contrary, had no such means of paying troops; her fleets were more expensive than her armies, particularly when her blockading squadrons kept the sea nearly all the year, and under almost every circumstance: the whole expenditure was defrayed from the treasury at home; whereas the French obtained theirs from other countries.

blish, so that money, to an almost unlimited amount, was obtained on credit, by the votes of the legislature. Without these loans it would have been absolutely impossible to have continued the war; by their means this country was able to make exertions, to fit out fleets and armies, and to grant subsidies to an extent that formerly would have been thought incredible. So great was the expenditure of Great Britain during the war, that it seems doubful whether any metallic circulating medium could, during this period, have sufficed for the purpose: what took place is well known—a suspension of cash payment by the Bank, and the substitution of a circulating medium almost entirely composed of paper, that was issued, and which for the time was found to answer the purpose *. After peace was restored, it was deemed requisite to return to cash payments by the Bank †; this operation it was imagined might be effected, as the great expenditure, generated by the war and fed by the loans, had ceased. Produce of land then fell in value, to that state in which it must necessarily be, in times of peace;

* Although, by the loans that have been raised, a certain degree of taxation has been entailed on this country, to pay the interest on them, until the principal can be liquidated by the operation of the sinking fund, yet the increase in the produce of the excise and customs has been so great, so much beyond what could possibly have been anticipated, that the burden on the nation is not felt so much as might be imagined.

† Parliament had no alternative but to return to cash payments. These were suspended from necessity, during the war; on the return of peace, the public creditor had a right to expect their resumption; the measure was not only sanctioned but commanded by public opinion.

(from which it is impossible for any legislative enactment to relieve it, except at the expense of other classes of the community, that have equal rights and equal claims to the justice of parliament.) Then it was that the pressure of the times on the landed interest in the country was felt with severity, to an extent not only unknown before, but also totally unexpected by the greater part of those most deeply interested. This cause alone would occasion a very great change in the upper class of society *, by forcing, in many instances, either a mortgage, or a sale of the landed property in their possession, the former occurrence leading eventually to the latter.

Now in the event of landed property being sold, if to a large extent, it is generally the case that a subdivision of any large estate must take place, for the accommodation of the purchasers and the facility of sale. The result is, that an estate which belonged, say to A., who formed one of the upper class of society, is purchased between B., C., and D., who each of them belong to the middle class; thus it appears (supposing this division has taken, or is likely to take place) that the

* The rise in the value of produce and of land had progressively taken place for so many years, that few had an idea that the value would not increase, still fewer that it would be stationary, and scarcely any that it would lessen in value. The consequence was, that entails, charges on estates, provisions for widows or young children, were of late years, in general, made on landed properties, much heavier than they would have been, had the operation that took place after the peace, and the change in the value of produce, been foreseen.

alteration in the value of landed property tends to lessen the upper class, and to augment the middle one. We have here stated what seems to be the common result of the disposal of landed property in the present day. Of course, in a large community there may be, and no doubt there are exceptions, and it may happen that instances can be produced of a great landholder adding to his estates; but it does not appear that such instances are in sufficient numbers, to alter the general operation of the effect now acting throughout the country *, which is, that the upper class is diminishing, and the middle class is augmenting, not in the same, but in a greater proportion. No one can deny that such a result is to be lamented, as far as the upper class is concerned, because whatever reduces an individual to lessen his expenses and to fall from the class in which he has been accustomed to move and to consider himself a member, can-

* It may perhaps be observed, that if A., one of the upper class, sells his estate to B., C., and D., of the middle class, still, as A. receives the amount in money, he therefore continues in the upper class. This would be correct if A. kept the purchase-money of his estate; but in general, soon after it is obtained, part is paid away either to discharge incumbrances, debts, younger children's fortunes, &c. so that A. is, in fact, no longer in the upper class. It may be said of B., C., and D., who purchase, that they must have been in the middle class before, to be enabled to become possessed of part of A.'s estate. This is also true; but then their property will have arisen either from accumulation, or bequests, or being created by them in a profession, or trade, or, in fact, in some way or other that placed them in that class of society above the lower: consequently they are in the middle class, whether they purchase or not; but A., who was in the upper class, and sells his property, is no longer in that class.

not, of course, be productive of happy feelings, under whatever circumstances such a change takes place.* This state of things has now continued for some time in the country, and as much of the landed property remains at this moment considerably charged by mortgages and other incumbrances, it seems probable that the operation just mentioned may continue to bring

* During the war, under the mistaken idea that the value of land would continue to rise, greater expenses were indulged in by the landed interest, than seemed warranted by prudence or foresight. This expense, by creating a greater demand for articles of luxury, might not be prejudicial to the nation, as it promoted industry, and distributed capital throughout the empire; but it was injurious to the interests of the parties by whom it was indulged. Those proprietors of land could steadily withstand the shock at the peace who had not extended their expenditure with their income, but who remained satisfied with their former income, and laid by the surplus arising from the increased rents. These individuals, at the resumption of cash payments, would find themselves better off than before, as the accumulation of their surplus rents, during the war, more than balanced any loss arising from the depreciation of landed property after that event: so far, therefore, the landed interest, and those of the upper class, who suffered by the change, could not, with any colour of justice, complain of any thing but theirs or their ancestors' imprudence.

Those who purchased land during the war, could not complain of the change of prices, as they purchased on a speculation depending on the chance of a rise or fall in the value of produce, and of the rent of land. During the continuance of the war, the speculation was favourable; at its termination, and on the resumption of cash payments, it was the reverse. Because such a speculation did not turn out as favourable as the sanguine purchasers could desire, they surely could not, or cannot, expect that parliament, public opinion, and the country, will sanction any measures to make produce high and corn dear, which might not be equally beneficial to the interests of the nation, that is, of the middle and lower classes, and those of the upper who made no such purchases.

about the same change already alluded to, for some time to come*. If A. should not sell, but only mortgage his property, the same result really, though not apparently,

* There seems no probability that the price of agricultural produce, of late years the cause of so much complaint and so much distress, will alter in any material degree; the chance is more in favour of a still greater depression than of any rise.

Should any one imagine that the statement made in a former page regarding the change in landed property and its subdivision, which is slowly, but gradually and imperceptibly taking place, is not correct, he is desired to ascertain only the fact of the amount of mortgaged property in the country, which will prove the case. Suppose an estate belonging to A. in the upper class, worth thirty thousand pounds, is mortgaged for twenty thousand, it follows that A. loses as much of his income, say one thousand per annum, as will pay the interest of this sum. As far, therefore, as A. or the community are concerned, he has lost two-thirds of this estate; which is the same thing in its results as a sale of two-thirds, though not so apparent. If A. cannot at any time redeem the part mortgaged, it is clear that it no longer belongs to him: if he can at any future period command twenty thousand pounds, he can either redeem the estate or purchase another: the result, therefore, of a mortgage or sale are, in their effects, nearly the same. That this is the case, to a great extent, with regard to landed property in Great Britain and Ireland, is notorious; it is clear the ultimate operation, whether sooner or later, on mortgaged property, must be, that it becomes vested in other hands.

In general, it rarely occurs, in the present day, that a very large estate is not divided into several lots at the sale; and it is a matter of rare occurrence that all such lots are purchased by one individual; consequently, a subdivision takes place. Against this may be put the number of those who add by purchase to their landed property; but the amount of these last is small, compared to the number of estates that are subdividing from the causes before mentioned. On the whole, therefore, the operation of the subdivision of land is greater than that of its accumulation. This will further appear from the increased number of freeholders in almost every county in Great Britain and Ireland, whose number is daily increasing.

takes place. In that case, part of A.'s rents go to pay the mortgagees, B., C., and D.; whether, therefore, the mortgage only or the sale takes place of A.'s property, the effects are nearly similar.

§ 2.

The second cause is the improvement that has taken, and is daily taking place in machinery, and in the saving of manual labour, which may be called the powers of machinery.

In the beginning of these observations, allusion was made to the alteration likely to be caused in the world by the increase of the powers of machinery. It was observed, that the power of machinery created capital; that capital acted as the cause, and was also the effect of civilization; that it created a more extensive middle class of society, augmented information, &c. &c., and, consequently, tended to strengthen and extend public opinion. Let us now proceed to consider this subject as far as it relates to this country.

That the use of machinery creates capital cannot be denied*; that this capital is created not only by the

* Suppose a machine to effect by steam, or by any other power, the labour of a thousand persons, and that the cost of keeping up such a machine, including the hands requisite for conducting it properly, should amount to the expense of keeping ten persons, it is evident that a saving of expenditure to the community of nine hundred and ninety men is effected, or, in other words, that a saving in the proportion of one hundred to one is obtained in manual labour alone. To this must be added, the greater quantity of manufactured goods thrown into the market at a proportionably low rate.

saving of manual labour effected by machinery, but also by a greater stimulus given to the sale of manufactured goods is equally clear; that this extends itself in a thousand different channels, so as to augment industry, and the demand for such goods, is equally certain*.

Whenever a cheap substitute can be obtained for labour, (taking labour to be whatever is produced by means of hands,) the production of labour is thereby rendered cheaper, and, consequently, more in demand, and the consumption is increased. In all countries where commerce or trade has flourished to a certain extent, we find a degree of capital has in consequence been generated, and a middle class of society has sprung up, which, being possessed of the requisites of public opinion, augmented that sentiment, (imperfect, of course, in proportion as the other requisites for its formation were deficient,) but yet sufficient to form something like a liberal government, not depending on

* From a greater demand being thereby occasioned, which creates a greater supply, and also, as M. Say observes, in his *Political Economy*, "a greater supply creates a greater demand."

At first it might be imagined, that the chief result from the improvement of machinery would be, that calico or broad cloth, or any other manufactured commodity, might be obtained for a few shillings per yard cheaper than before machinery was in use; but when it is observed to what an extent in manufactures, in navigation, in agriculture, in mining, the power of machinery may be applied, and how much further they may be extended, one feels at a loss to form a conjecture as to the result. Who can say, reasoning from analogy, how much further the power of machinery may be carried, and to what an extent such power may alter the condition of mankind!

the will or caprice of one man, but tending towards liberty, by securing the persons and properties of individuals, as much as the state of things in former days, the rude notions of civil polity entertained in those times, and the weak and even defenceless situation of such petty communities, usually surrounded by despotic sovereigns and savage and warlike people, would admit. Unquestionably, either commerce or trade had formerly created, to a certain extent, capital: in the Hanse towns, in other free towns on the continent, in the republics of Genoa, of Venice, in the United Provinces, &c. &c. It is perfectly clear that, in all these places, and others similarly circumstanced, nothing could give them the degree of civilization to which they had attained, and the middle class of society of which they were possessed, but the possession of capital, which, at that time, could only be created by commerce or trade, and, in some trifling degree, by manufactures, and by the spirit of activity and industry arising from one or all of these causes. If such was the effect of capital created in a former century under peculiar circumstances, what may be expected with us at present, when, added to all these, acting with an accelerated force, can be obtained the power of machinery, that has already done so much, and may be expected to do so much more*? The number of individuals that have

* If, by means of machinery, a pound of cotton or worsted yarn, or any other substance, can be manufactured into two yards of stuff with little manual labour or expense, it follows that these two yards can be sold for a price amounting to the prime cost of the material,

been lifted out of the lower class into the middle class, from the capital created by means of machinery*, is great

together with an interest for the capital expended in the machinery, its wear and tear, with a fair profit for the capital advanced. The sum charged for profit must, of course, be diminished as the machine works with cheapness, celerity, and certainty. At length the machine for working the material may be rendered so perfect, that the two yards produced by it from the pound of material may be disposed of at a small sum beyond the price of the raw produce, and yet afford, if sold in great quantity, a fair remuneration to the manufacturer. Now if the same material were manufactured by hands, without the assistance of machinery, the value of the article might be charged at one hundred, or one thousand per cent. beyond the value of the raw material, and even at such a charge might be inferior in quality to that produced by machinery. It follows, therefore, that by the power of machinery the quality of manufactured articles may be augmented, and their cost price diminished to one hundredth, one thousandth part, or any other proportion. The result is, that a number of individuals, who would not otherwise be enabled to procure these commodities, are able to obtain them. The same remark will extend to any other article, of every description of luxury, of comfort, or of necessity, that can be imagined.

* From the facility with which every description of article is formed by machinery, and the ease with which it may be obtained, even a great amelioration may be expected to take place in the condition of those that have been defined to belong to the lower class of society. At no distant period, it may be possible to find in the cottage of an individual of the lower class, what, in former times, was scarcely to be found in the castle of the feudal lord. Let any one form an idea of the comforts, or even luxuries, that may be seen in the dwelling of an industrious person of the lower class, and compare it with the habitation (according to the opinion that may be formed from the best sources of observation) of one of the nobles or great men, say of Richard I., or any other monarch of the same century. The cottage of one of this class of the present day, though small, may yet be possessed of some articles of comfort or luxury, that add considerably to the comfort and en-

beyond what at first sight would appear possible. It does not follow but that, by this cause, some indi-

joyment of the possessor. The castle of the noble of the days of Richard, though spacious, did, perhaps, contain but few, if any, of such articles of luxury, or even comfort.

If the comparison were drawn between individuals of the middle class of society of the present time, and those of the upper class of Richard I., the result would prove still more powerfully the degree of enjoyment of the middle class in the present day. It may, therefore, be almost taken for granted, that the degree of comfort, of enjoyment of life possessed by the middle class in a civilized state, is not only equal but greater than what was possessed by an upper class some centuries ago. Let any one reflect on the extent of the upper and middle class in this country at present, compared to the upper class in the days of Richard, the proportion might, perhaps, be a thousand times greater, even allowing for the difference between the population of that day and the present.

In former times, the means of procuring the necessaries of life were more precarious than now, when cultivation is well understood. The privations suffered by the lower class in times of severity must have exceeded any thing of the sort in the present time, from want of civilization, of capital, of exchange of commodities, and of facility of communication, besides the difference between our improved and extended state of agriculture, and the manner of tilling the land then prevalent. Supposing superabundant capital to exist in many countries, or a considerable interchange of raw for manufactured produce, or of one manufactured article for another, it seems apparent that a freedom of trade in corn, as well as in other commodities, would be of the greatest service to the communities by whom such an exchange was made. Let us suppose that, eight hundred years ago, a scarcity in the crop of corn took place in Northumberland, whilst there was an overplus of production in Cornwall. In those days those counties had little or no communication, either by land or water, had no means of exchanging their commodities, and nothing to give in exchange. The result was, that if such a scarcity took place in Northumberland, distress and privations would follow, which might at present be removed by the facility of transporting corn, and the means of paying for it when obtained, by

viduals have also been lifted into the upper class; but the number, in proportion to those placed in the middle class by such means, is smaller even than the proportion between the numbers of the upper and middle class would warrant: in saying this, we allude to the influence of the power of machinery in creating capital, which augments the middle class, not to a few individual instances of lifting into the upper class, which

surplus capital. Precisely the same observation holds with regard to the freedom of a corn trade between this country and any foreign state: where the means of conveyance are in existence, where the means of paying for it are at hand, where the deficiency occasioned by seasons may be remedied by the interchange of one nation with the other: it would be as preposterous to check such a mutual accommodation and interchange of raw produce for manufactured articles, as it would have been in William the Conqueror to forbid Cornwall from supplying Northumberland, and even more so, as in those days the means of interchange were not at hand. Although, in different latitudes, a difference of crop, according to the season, may take place, yet the whole yearly amount of produce from cultivated land is averaged to be nearly the same, taking every part of the globe; which gives an additional reason for supplying the deficiency in one place by the superabundance in the other.

Even if the state of the world was so barbarous as to prevent a demand for the articles produced by the power of machinery in any country, and that they were confined to that nation by whom produced, it is evident that all the advantages arising from capital would be found in such a country, as a greater degree of civilization, of activity, of enterprise, and of saving of manual labour, would exist in the community. Supposing, for example, that Great Britain was entirely secluded from the rest of the world, although the creation of wealth might not be so rapid, and, therefore, the middle class not be augmented so fast as at present, it is certain that if machinery was used, in proportion as it was extended would the capital and middle class augment.

have little to do with its effects on society at large *. That the increase in the use and power of machinery tends to increase the capital in a country, and principally to augment the middle class of society, we repeat †. That, as such, it totally alters all

* In a former note, the remark has been made, that the low price at which various sorts of manufactured articles can be sold that are made by machinery, (we are obliged to use the word manufactured for the produce of machinery, although, perhaps, a contradiction,) acts as a powerful stimulus to exertion amongst the lower class. The desire of obtaining some little addi[illegible]al luxury an[illegible] article of comfort, overcomes that indolen[illegible] powerful and so general in its operation on mankind. The peasant, or the mechanic in general, would not probably exert himself beyond the absolute necessity of obtaining the requisites of food and clothing, and might, probably, remain the rest of his time idle, if he was to exert himself for some doubtful or distant advantage; but the case is different, if, by bestowing some additional labour beyond the usual hours of work or employment, some little additional comfort may be obtained for his family. This additional work, or exertion, it is evident, adds to the wealth of the nation, in proportion as the aggregate amount exceeds the ordinary labour.

It is scarcely possible for a country annually producing so large a quantity of manufactured articles as Great Britain, not occasionally to experience a slackened demand, arising either from the finances or trade of other nations, their political situation, or from an over production at home.

† The low price at which the power of machinery enables the manufacturer to sell his goods in foreign countries, will, it is evident, give them the preference over those less cheap; and the result is, that such goods are brought within reach of almost every individual. The additional return that is made, and the capital created to the country is evident, and this capital, in general, is divided amongst the lower, the middle, and little with the upper class of society. Although it would seem that the individual whose capital is advanced in the erection of the machinery would make the greatest profit, it seldom happens that this capital is supplied by any one individual, but by the collected capital of

the former relative proportions between the upper, and the middle, and the lower classes, is equally certain *. It is evident that, in proportion as the middle class of

many; this part of the profit may be said, therefore, to go to the middle class. However, in all establishments where machinery is used, a great expenditure takes place amongst the leading men of every branch of the department, amongst the engine-makers, &c. &c., men who, by their industry, and knowledge of and attention to business, have obtained such situations; or by others who, from their probity, good conduct, and fair dealing, have the loan of some capital, which enables them, in time, to create some for themselves. these descriptions of persons, originally in the lower class, rise by degrees into the middle; in fact, it is scarcely possible for any one to turn his eyes on any extensive concern set on foot and carried on, and not observe that this is constantly going on and daily increasing. The individuals of the description before-mentioned, and others similarly circumstanced would, in all probability, have remained in the lower class, if machinery had not been invented. This is a separate operation from the absolute capital created by machinery, which also, every year, raises many from the class in which they were born to the one above.

* Thus it appears, the result arising from immense accession of capital created by machinery, has a tendency to augment the middle class. As this effect can be distinctly traced to be produced by such a cause, we may reasonably conclude that the same effect will continue to be produced as the cause increases. The manner in which the middle class is augmented by the creation of capital is, by lifting into it so many individuals from the lower class; which is, in every point of view, a more agreeable result than the reduction of the upper class into the middle. For, although the sum of enjoyment or happiness (if it may be so called) to the community may be augmented, yet this augmentation takes place at the expense of the upper class, and, consequently, by the subdivision of property; whereas in the former, the sum of enjoyment and happiness is augmented without any deduction whatever, and many are benefited and none injured.

society is powerful, when compared to the other two, these are proportionably weaker when considered in a political point of view*. We wish to be distinctly understood that, in stating this, and in making our observations, we are merely giving our opinion as to the probable, present, and future result of the use of machinery on the different classes of the community; we are merely stating facts as they occur, not advocating the power or the influence of one class more than another, if we only show where the greatest command of capital lies, and, consequently, the greatest influence in the state†. The object of these observa-

* It has been observed by a distinguished writer (Malthus on Population), that the distribution of property to a certain extent, in any state, is highly beneficial.

Formerly, nearly all the monarchies of Europe were founded on the feudal principle, the greatest portion of the soil belonged to the crown, to the church, and to the feudal barons, who held directly by grant from the crown. Such a state of things was a certain indication that little civilization existed; that the lower class had no chance of rising into a middle class; that there was no stimulus for exertion, and, consequently, that it was nearly impossible to acquire capital, which can, in fact, scarcely be obtained by one of the lower class in a state purely agricultural. This must be understood to apply to a country already divided, by feudal tenures, amongst great proprietors. In a new country about to be cultivated, landed property is usually obtained in moderate portions to promote its being cleared; in such a case an extensive middle class may be speedily formed, as can be exemplified in many instances of late years.

† Although it may be, and unquestionably is, a hardship on those who are thrown out of employment by the use of machinery, yet commonly such a state does not continue long, as those persons either get employment elsewhere, or find it by being employed on the machinery when it extends in operation, which is commonly the case.

tions is to lay down fairly, and without bias or prejudice, what is likely to be the result of the great additional capital thus created on the different parts of the community, and how far they affect public opinion by increasing the requisites for its formation. That the improvements in machinery, such as they are now (and how much further they may be carried, seems to surpass conjecture) in use, are likely to ameliorate considerably the condition of mankind *, seems also to be beyond doubt; the increase of the middle class in pro-

* If one might be allowed to conjecture on the happiness of a community, taking the supposition that the happiness of people was influenced by a greater proportion of comforts and fewer privations, one might say, that their happiness depended in some measure, on the proportion of the middle class of society, compared with the lower class. For example, that country may be said to be possessed for its population of more comfort and enjoyment where the proportion of the middle class to the lower is as one to seven, than where it is as one to seventeen. In Turkey, for example, (putting out of the argument all considerations of liberty, of religious feeling, and civilization, merely considering the absolute ease and plenty of the middle to the lower class, and taking into the account the state of ease of the one, and temporary privation of the other,) it cannot be denied, that, if a middle class existed, which it does not, there would be more happiness. Amongst the Turks, where there is scarcely even an upper class, suppose the proportion of the upper and middle class together to be, to the lower, as one to ten thousand, whilst in Great Britain the proportion is as one to ten for the same number; the difference therefore of the happiness of the two populations would be in the same proportion, that is, a thousand times more in Great Britain than in Turkey, taking the ease, comfort, and plenty enjoyed, and putting out of sight the more important considerations, the enjoyments of civil liberty, religious and moral principles, and civilization.

portion to the lower, would, at once, set the question at rest. It has, however, been asserted by persons whose talents entitle their opinion to respect, that injury might, and does, arise to society from the extension of machinery *; and as this opinion may have weight, it ought to be remarked by those who entertain such a sentiment, that it is scarcely possible to introduce any measure of importance in a country, without some evil or some inconvenience arising from such innovation †; but if it clearly appears that such a measure or

* For example, it is possible that the establishment of a steam-boat to convey passengers over a piece of water, might injure those boatmen who were before employed. If, however, the advantage gained by a quick passage to the public is considered, the facility of communication that is gained, the ease obtained for carriage of goods for commercial and other purposes, it cannot, for an instant, be doubted that the public is benefited, and that an augmentation of capital is likely to be made, more than counterbalancing to the community the loss sustained by the boatmen. It may even be said, that ultimately little real loss will be suffered by those on the spot and its vicinity, and that the lower classes in that neighbourhood will be ultimately benefited.

† When machinery is first applied to the formation of any fabric or any production formerly worked by hands, the persons before employed may be, for a time, thrown out of employment, and temporary distress may arise in many cases to the labouring classes. Much used also to be felt formerly by the change of fashions, and the demand for particular articles.

It cannot be denied that, in general, in manufacturing towns, the population is not of the best description, certainly inferior to that population where, in separate cottages, the looms are worked by hand, and each manufacturer lives separate. However, much seems to depend on education, and the proper religious principle inculcated into children, which may more than counterbalance the evil of large assemblages, or the bad example to which they may be exposed.

such an improvement does more good than harm; or that the sum of the benefits which accrue from it far exceed the sum of the disadvantages that it occasions, then it must be allowed that such a measure or improvement is beneficial to the community.

The creation of capital in this country is also augmented by our colonies, and by commerce; but the advantage from the former would not be so great were it not for the power generated at home, of creating articles of exchange for their raw produce. With regard to commerce, it seems evident that, unless there was a great manufacturing power at home, commerce, beyond the carrying trade, would be of little importance *. In the carrying trade, Great Britain might be successfully rivalled in time of peace by other nations whose freight would be lower. One of our chief sources of wealth, therefore, may be said to arise from the industry of the people, and the power of machinery, which is daily improving. This being admitted, and there is no reasonable cause to think otherwise, it

* Some years ago, Spain had the most extensive colonies in the world. Mexico and great part of South America were hers; and yet she obtained little capital from them, except the bullion imported on account of the crown and for private merchants. Colonies alone, therefore, do not afford to the mother country either capital or wealth, unless there is the power of producing, in the mother country, articles necessary to the colonies. The same of commerce: if the country has no manufactured goods to exchange for others, or for raw produce, the commerce of a country must sink to the carrying trade; this is said with certain exceptions. The observation is merely made to show how much internal activity and industry add to national wealth; and how much, therefore, must now be added by the power of machinery.

follows that the personal property in this country is increasing and subdividing * in an unusual and unforeseen proportion, in consequence. How far such increase will go, or whether other causes may not arise to prevent the accumulation of personal property in

* No one that has considered the subject can deny that, for some years, the middle class of society in England bears a greater proportion, when compared to the lower class, than in any country in Europe. We confine the observation to Europe, because it may happen that in some parts of the United States of America, where fertile land is to be had in plenty, and where population has not yet extended itself to press on the means of subsistence, a more extensive middle class may be found. As we have not the means of forming any accurate opinion, we must postpone any further remarks on the population of the other hemisphere, until we come to that part of our observations. Even some years ago, foreigners in England observed with surprise the number of small comfortable houses, both in large towns and the country, and the number of well-dressed people; this, though a remark trifling in itself, serves to show the state of the country.

Although, as we have said, there may be an extensive middle class in some parts of the New World, from the facility of obtaining large tracts of good land, it must not be forgotten that a middle class, created by land, has a tendency to subdivide after fully peopled. For example:—suppose the State of Kentucky in North America to contain a great proportion of the middle class; suppose the limits of the state fixed, and no capability of further extension to exist; as population increased, the amount of land that supported a man in the middle class must be divided among his children, perhaps in the next generation. This might not reduce them to the lower class, but allowing the operation of an extended population and of subdivision to continue, in the second or succeeding generations, such an effect must take place; that is, taking for granted that no emigration could be made into the interior country, or no land be obtained at a cheap rate,—suppositions not likely, for some centuries at least, to be realized in that part of the world.

this country beyond a certain point*, are questions not easily solved. That the power of creating personal property in Great Britain is now in full action †, and

* Although personal property may be created in the British empire to a great amount, it does not seem so certain that it may always remain. If all communication between these islands and other parts of the world was put an end to, by some insurmountable obstacle, such might be the case. At present, however, states are rising up in other quarters of the globe, and particularly in the other hemisphere, where liberty, and security of person and property, may shortly be established (we will hope) on a firm basis. In such countries, capital and personal property is in great request; and, consequently, the interest to be obtained for the advancement of capital, or the loan of personal property, is greater than in a state where such property is plentiful. The result to be expected is, that much of the superabundant capital not employed in this country, may be transmitted there, either by the emigration of the parties to whom such property belongs, by loans to the government of those states, or by other means. At first it is probable that capital will be advanced but slowly; but if security attends the investment, and if the profit for such investment is higher, the thirst for gain is such amongst mankind, that no doubt can exist that capital to a considerable extent would flow in such a direction. The most difficult point to solve, is the time when such an event is likely to take place, as that must depend on political events, and on security from foreign wars or revolutions in those states, not easy to determine.

† How much longer, that is, for what period, the power of creating capital, and extending personal property, may continue in this country, no one can determine or even conjecture. One would think it likely to continue until other nations have the same activity and industry, the same powers of machinery, an equal capital and skill, and the same expeditious means of importing and exporting possessed by the inhabitants of this island. The advantages that other states would have, would be an extensive country, a population supported at a cheaper rate, which consequently afforded labour at a lower rate, and the power of obtaining iron and coals from mines yet unexplored, and also advantages of soil and

that it may be extended beyond its present amount cannot for a moment be doubted, if an opinion can be formed from what has already taken place. That capital * has increased nearly in the same propor-

climate; but to these must be added national activity, and that spirit of enterprise, and desire to improve the condition, so powerful in Great Britain.

* We think it has been shewn that the additional capital created by machinery, and the increase of personal property, tended to augment the middle class: it not only does this in a powerful degree, but it also ameliorates the condition of the lower class very considerably. The best manner of evincing this clearly, may be to compare the situation of a labourer at present, with the situation of one in the same condition, say two hundred years ago. Unquestionably the situation of the labourer is better at present. Supposing the wages of labour to be the same, with reference to the price of corn, that they were two hundred years ago, the labourer of the present day would be better off, as the price of petty articles of luxury, or of comfort is so low as to be brought at present within reach of the lower class, which was not the case formerly. Let us, however, take their comparative situation at this day, and what it was two hundred years ago, by the standard of the price of wheat. From the average of five years preceding the year 1651, it appears that the labourer's wages were seven-twelfths of a peck of wheat per day. In the averages of the years 1810 and 1811, a labourer could earn, per day, five-sixths of a peck of wheat. It is evident at the present time, corn being cheaper, and wages not lowered in proportion, that he can earn considerably more. It has, by some writers on political economy, been established as a criterion to judge of the labouring man's situation, to compare his daily wages with the value of the gallon loaf. If the average of a labourer's daily wages come up to the value of a gallon loaf, he may be considered as fairly paid; if below it, his condition is not what, for the sake of humanity, it might be wished.

The vast amount of property in the funds of this country, as well as all the other personal property, to an immense amount,

tion as the extent of personal property; that it has augmented and is likely to augment the middle class,

advanced either on mortgage, in canal or other shares, East India stock, &c., &c., being subject to the law relating to personal property, is of a description which, from its nature, has a tendency to subdivide as it changes hands, which tendency must in a very powerful manner augment the middle class, being constantly in operation: this acts even in a much greater ratio than the subdivision of landed property.

It follows that the sale of landed property, when extensive, depends whether it is sold entire or in portions, on the means of the purchasers: if, therefore, the personal property in the country is subdivided, in process of time it is clear that the land sold must also be subdivided. When an individual disposes of landed property, the purchase-money, in most cases, is also subdivided: thus, subdivision takes place and augments the middle class.

In Russia, where the territory is possessed almost exclusively by an upper class, if no trade existed, it is clear there would be created but a small middle class, and the property would for ever continue in the upper class: scarcely could there exist a chance for the peasant (even if free) to create any capital. Where no trade or commerce and few manufactures are established, the large landed proprietor can obtain no rent from his tenants but in produce, which may enable him to exercise freely what was so common formerly,—the greatest hospitality on his estates amongst his vassals and retainers. In this case, the temptations (as we have before stated in the preliminary observations) to dissipate beyond his income are not great, from the same cause that prevents him from being paid in circulating medium, the want of trade, of manufactures, and, consequently, of activity and industry amongst the people. In such a country, the peasant who works on the land has but little opportunity, even if he has more industry, talent, and enterprise than falls to the lot of his fellows, to create for himself any capital: even if, by an extraordinary chance, some were created, such an instance would be more an exception to the rule than a proof to the contrary—so essential are commerce and manufactures to the creation of a middle class. On the continent of America, particularly in the United States, from the accounts given,

and to improve the condition of the lower class beyond what it formerly was, seems probable: the former of these results is the most important to the subject under our consideration.

We have dwelt so long on the improvements in machinery and its general use, from its being the cause of the increase of capital and of personal property, and thereby assisting powerfully in the increase of the middle class, and tending to augment the requisites for the formation of public opinion in the community.

the case is different; small portions of land are sold to persons in the lower class, who have industry, who are anxious to create some little capital, which, even there, unless with facility of communication, is no easy matter, but who still, by degrees, form a middle class of society.

It appears that when land has been obtained by conquest, as has happened in almost every part of Europe, and then has been portioned off by the conqueror amongst his retainers, according to the well known rules of the feudal system, by which these retainers became feudal lords, obliged to follow their king or chief to war, with a certain number of followers, whenever called on for that purpose,—in such a case it has happened that the great portion of the land has been granted to a number of persons who formed the upper class. Now in such a state of things, if no trade or commerce existed, this upper class would be enabled to hold their lands for ever, and no middle class could rise and create either capital or the means of purchase. Such seems to have been the case in great part of Europe during the middle ages; and, unless a certain degree of activity and commercial enterprise had extended itself, might have continued for centuries more. In whatever part of Europe commerce or manufactures made their appearance, there did a middle class spring up, which obtained the requisites for the formation of public opinion; and the consequences are now apparent in the great change that has taken place in Europe.

§ 3.

In former times, there was little or no superabundant capital, and little personal property, which appears not only from the laws regarding personal property *, but also from the total inability of our rude ancestors to create property of such a description to any amount, without commerce, or manufacturing industry, and without national confidence, or the security essential for the creation and preservation of this description of property. In those days, the advantages likely to arise from confidence, and the extent to which public credit might reach, were unknown.

The increase of the benefits arising to a community from the increase of personal property can scarcely be doubted, and the operation of the creation of capital and personal property in altering the relative proportions of the several classes of society is apparent. If any number of heads of families, say from a hundred thousand or half a million, or any other number, are lifted, in a given time, out of the lower class and placed

* The law in England, regarding personal property, evinces the little value in which it was formerly held. The old writers on English law, Britton in particular, scarcely mention this sort of property. The subsequent writers, Bracton and Fleta, allude occasionally to personal property, but treat it as of slight importance; it was then only gradually rising into notice. In the present day, personal property has increased to an amount that is incredible, if such is compared to the amount in former times. That the laws in Great Britain on this description of property have been so long neglected, shows how tardy all nations are, even the most enlightened, in improvements of a legal nature.

in the middle one, such a change is an evident amelioration in the condition of the individuals on which it operates. It seems to be an addition to the stock of enjoyment—one may almost say of prosperity to the said individuals; and, at the same time, the capital and the industry of the nation are augmented. The number of persons thus added to the middle class increases with the amount of capital created *.

* The following aggregate of each class in the community in Great Britain and Ireland, was given in a work published some years ago. If the relative proportion of income was in 1814 as here stated, how much greater in proportion must be the aggregate of the income of the middle class at present!

Average of the Incomes of the People in Great Britain and Ireland,

	Number of heads of families.	Aggregate of yearly income.
UPPER CLASS.		
Average of the yearly income of those who have 3000*l.* and upwards, including bishops, princes of the royal family, and all individuals except the sovereign	1,436	£8,775,000
MIDDLE CLASS.		
Average of the yearly income of those who have under 3000*l.*, and not less than 60*l.*	1,596,151	240,329,665
LOWER CLASS.		
Average of the yearly income of those forming the lower class, that have an income under 60*l.*	1,904,193	181,270,707
Average of those of the lower class that receive assistance, and are not possessed of income.	387,000	9,871,000

Thus it appears that, in 1814, the aggregate of the income of the middle class exceeded that of the upper, in the proportion of upwards of twenty-nine to one; and the income of the upper part of the lower class exceeded that of the upper, in the proportion of twenty-

That an extensive middle class at present exists in England cannot be denied: such a class is perhaps the greatest security for the preservation of civil liberty, and against the chance of a revolution, that can be found in any country.

It is singular to observe, in tracing the progress of civilization in England, what a gradual subdivision of property has taken place. Formerly, landed property (and no other description of property appeared known) was in few hands only. In proportion as wealth and capital have increased, large properties in land have gradually subdivided, and, with few exceptions, the extensive domains of the old proprietors have by degrees melted into a number of small estates *

one to one.—COLQUHOUN'S *Treatises on the Wealth and Resources of the British Empire.* Fourth edition, p. 124.

* Some persons have asserted that the stimulus for exertion given to the community by the increase of wealth is injurious to the happiness of individuals, by exciting a spirit of emulation, and by creating new wants, and a desire for luxuries in the nation; thereby occasioning speculations and exertions that may be disappointed. It must not be forgotten, that such sentiments, if carried to an extreme, (which it must be hoped they are not in general,) arise from other causes than the education or wealth obtained by the community.

Education and a station above want, in the community, are positive advantages. If they are turned to an improper use by the evil passions of some, it cannot be avoided: the benefit bestowed is greater than the evil suffered by the community. Iron is of service to mankind, yet of this metal is the dagger of the assassin made. The results arising to mankind from the creation of wealth and the powers of machinery are great: some evil may arise, but it is infinitely surpassed by the aggregate of the advantages that these bestow on every country.

Such a subdivision of property would, without any other cause, augment considerably the middle class; but when to this is added the extraordinary increase of personal property that is constantly creating and subdividing, there is no cause to be surprised at the extent of the middle class and the power of public opinion.

In our endeavours to trace the rise of public opinion in this country, and its effect in gradually ameliorating the form of government and the constitution, we have referred to facts which are of too recent a date to be controverted, and abstained from any theoretic notions or speculative opinions. It has been seen that public opinion in England has augmented gradually; that its requisites have promoted commercial and manufacturing industry of every description, which, in turn, have augmented the means of extending such requisites; and that they are likely to be further extended by the improvements and general use of machinery.

It appears, that whatever tends to augment or retard the increase of capital and the progress of civilization in the community, has the same effect on public opinion: that this extends not only to Great Britain, but to every other part of the world.

Public opinion, therefore, is necessarily augmented by the use of machinery that serves as a substitute for manual labour; for the same reason, public opinion is retarded by whatever tends to lessen the creation and extension of capital,—such as want of industry, of commercial activity, habits of idleness encouraged amongst

the people, a state of war, uncertain tenure of property; in short, by whatever tends to check those habits of industry and the formation of the requisites for public opinion. Such are the principles that may be applied to almost every community, with few or no exceptions *.

The English constitution, as at present established in this country, appears founded and supported by public opinion. If this is admitted, and it seems difficult to form any other conclusion, it follows that, as long as it continues so supported, it is perfectly secure from any revolution: being approved by the most powerful sentiment in the country, it cannot be overturned by any sudden or violent convulsion. Suppose that (which is most unlikely) any change was required by public opinion—this sentiment being so powerful, there could be no opposition, and therefore, no struggle and no convulsion would ensue. In progress of time, slight

* It may seem a contradiction, that public opinion in England should have increased so much during the late reign, when the country was so long engaged in war. The situation of Britain gave it a considerable advantage, as the industry of the people was not drawn off by the invasion of foreign armies, or the security of property thereby endangered; consequently, the same activity, even in war, manifested itself in every part of the country. This contributed much, in the dawn of public opinion, to extend civilization, and to promote industry. In most states of the continent, a large army was deemed requisite for national defence, which, in the hands of the sovereign, rendered him absolute. Such was not the case in England; and of late years, since permanent armies have been supported, the power of public opinion has been such as to render them innocuous as far as liberty is concerned.

alterations may be made, but the constitution, which it is admitted is as perfect as the nature of human establishments will admit, will remain on the most secure foundation, as long as it is supported by the public opinion of the community*.

§ 4.

On the Influence of Property in this Country.

In comparing the constitution, established by public opinion in this country, with the form of government that existed before the accession of William in 1688, or with any other form of government established in Europe, we find that we are possessed of freedom as ample as can be desired. It is worthy of remark, that public opinion having established its influence, the power of property is becoming paramount †; and aristo-

* Napoleon said, "The English constitution is built on a rock; but the government in France (such as it was in his day) entirely on sand."—*Conversations de St. Helene, Las Casas' Journal.*

† A bashaw in Turkey, as the representative of the Sultan, and as wielding part of his power, is undoubtedly more dreaded and thought of greater importance than another Turk, his neighbour, who may possess ten times his property; for the plain reason, that as a despotism exists, the power of the bashaw is uncontrolled, and he may, at his will and pleasure, give his neighbour the bastinado, and seize his property. But when despotism no longer exists, the power of the bashaw is no longer feared; and in proportion as laws are established and equally administered, that power ceases altogether. This is perhaps a strong instance, but it shows that if despotic power is taken away, the influence of property

cracy of property has, in some measure, superseded that of rank or family, a result always to be anticipated in a free country where public opinion has influence. Whether this change of opinion is to be regretted or not, whether erroneous or correct, is not the question: such is the fact, and such must always be the case where there is an impartial administration of the laws, and where no individual has any power over another, beyond what is admitted and sanctioned by public opinion. In a perfectly free country, therefore, it may be assumed that the only legitimate influence is that which arises from property, which acts on mankind by the benefits it is likely to bestow *. The influence of wealth arises from the command it gives of paying for so much labour, which gives it a certain power in the community.

assumes the preponderance. The moment the bashaw has no longer any power, he has not the influence of his neighbour, the wealthy Turk, as the latter has more to bestow; and mankind, if not acted on by fear, are influenced by interest.

* It is to be regretted that the influence, afforded by property, is not always possessed by the most deserving, or by those who can best promote the welfare of their species; but it does not seem likely that any other description of influence could be tolerated in a free country. It is one that does not compel, and acts only on the inclination of man, and induces him to act in that manner best suited to his own advantage.

It is singular that the love of gain influences the mind of man in general more powerfully than the fear of punishment. An individual of wealth, in a civilized country, is better attended by his menials than a despot surrounded by his slaves. In many of the actions that influence mankind, the same observation may be made: interest is a stronger passion than fear. When a community is influenced by public opinion, it is not easy to imagine how a revolution can

In Great Britain, therefore, the aristocracy of rank is merely nominal. The real influence in the upper class is from its wealth, or command of labour *. It has been with truth asserted, that whatever privileges in the state are allowed to any set of persons not general to the community, is an injury to the people, unless such privileges are granted for the sake of the public good. This axiom in politics (if it may be so called) is acted on in this country; no power or even privilege is allowed to any person unless for some advantage to the whole. The members of the House of Lords are not distinguished from the people by power or privilege of any sort beyond what is granted to them as members of parlia-

take place, unless by the irruption of a foreign force that should be joined by the lower class. A revolution cannot take place unless there exists, amongst some of the classes of which society is composed, some strong cause of dissatisfaction, some specific cause of complaint.

* In a former page, the income of the upper class, which seems inconsiderable when compared with the middle class, is stated. It may, therefore, appear somewhat singular, that the influence of the upper class should be spoken of, when the aggregate of their income is so little when compared to that of the community. It must be remembered, however, that there is, in proportion, a much greater surplus of income in the upper class, and, consequently, more influence than would appear from the relative proportions of income.

Before the requisites for public opinion had extended themselves, the aristocracy in England, which then only formed the upper class, possessed an influence independent of their rank or even property, that does not at present exist. When the middle class and public opinion rose into importance, the upper class was equalled in information, if not surpassed by the middle class. To these causes may be added the others already mentioned: the alteration in property, &c. &c.

ment, and these are trifling, of little importance, and granted to members of the legislature to enable them to carry on the service of the nation. Although an order of nobility is established, and forms a high and distinguished reward for merit, and a proper distinction for wealth or talent, the privileges (beyond those stated) of the peers are absolutely nothing *. This body was established by the wisdom of our ancestors, and subsequently sanctioned by public opinion, as requisite for the formation of our constitution, as one of the component parts of the legislature, and as forming, at the same time, the highest judicial tribunal in the country, and as affording, at a cheap rate to the country, a reward for those persons remarkable for their public services, or conspicuous for their wealth or talents, and thereby granting the means of gratifying the moderate and honourable ambition of individuals who have deserved well of their country.

* How different is the nobility in England from the body of the same name that existed in France before the revolution! The nobility in France were formerly a privileged caste, into which scarcely any one could be admitted, whatever might be his talents, his property, or the services rendered to his country. This caste was exempt from the payment of taxes, and all other public burdens, and had other immunities, both injurious and degrading to the other classes of the community. There is no doubt that the existence of such a class was viewed in France (as it would be in England) with great dislike by the people, and that their exemptions were a specific cause of complaint, and did probably powerfully tend to the furtherance of the revolution. How differently situated are we in England! how perfect the rights! how impartial the laws! and how equal are the burdens imposed on all classes of the people!

The House of Lords possesses scarcely any rights or privileges beyond those appertaining to every member of parliament.

It seems, therefore, but reasonable to conclude that the House of Lords in this country is sanctioned by public opinion. From the admission into that assembly of individuals, qualified as before stated, it appears open to the competition and good fortune of individuals of the other classes, who constantly gain admittance into it; consequently, all sentiments of jealousy which might otherwise exist, were it an exclusive body, are at an end. This forms a very marked difference between the aristocracy of Great Britain, where public opinion predominates, and that sort of nobility yet remaining in those countries where liberty, civilization, and the requisites for public opinion have not, as yet, spread themselves through the people. In a free community, where public opinion is all powerful, the aristocracy consists in an assembly forming, like ours, a constituent part of the legislature—the individuals of which it is composed being selected for their property, their talents, their respectability, or from other causes, for which every citizen is eligible, no matter how mean or low his birth or family may be, provided he is possessed of all or some of these requisites. In those

* A body, constituted like the House of Lords in England, may exist in perfect accordance with public opinion, because, under no circumstances, is its existence hostile to the liberty of the people; and it serves as a reward for merit, and as an innocent distinction for fortune, without interfering in any manner with the rights of the other classes.

nations where public opinion as yet is not powerful, the aristocracy is a separate class in the state, between which and the other classes there is a barrier as insuperable as between the castes of India.*

* In England, the aristocracy may be said to consist of those persons in the upper or middle class, that have been selected, from various circumstances. How different is this aristocracy from that of France before the revolution, or that of Spain, or of any other country where kings were or are despotic, and public opinion has not declared itself! In such countries, the nobility were exempt from the payment of taxes and other burdens, and, besides, were invested with rights and privileges incompatible with those of the rest of the community. Such an order could not exist where public opinion had made any progress. So completely are the old notions of antiquity of family, and of high birth from a long line of ancestors exploded, as necessary for the composition of the aristocracy in England, that any individual setting up a claim founded on such advantages would be thought extravagant. One circumstance, trivial in itself, shows, however, the difference that exists in a nobility where public opinion is powerful, from what it is where no such feeling is found in the community. In France, before the revolution, those persons on whom titles of nobility were bestowed, were scarcely looked on as one of that order, or considered respectable: they were styled "nouveaux ennoblis," and were held in little or no estimation. In England, on the contrary, those newly raised to the peerage, being commonly men either of fortune, or of talent, or men who have served their country, are usually looked upon with more deference, and have, perhaps, more esteem from the public than those who have inherited the right of peerage from their fathers.

If the resolution proposed some years ago in the House of Lords, for limiting the peerage, had been passed into a law, it would not only have taken from the crown the means of affording a cheap reward for meritorious individuals, but such a measure would have lessened the respectability of the upper house, by keeping back the fresh flow of creations, which, in general, form the brightest ornaments of that assembly, and keep up its respectability in the eyes of the public.

Thus the House of Peers is supported by public opinion, as affording an opportunity of rewarding meritorious individuals, and granting some distinction to the wealthy, without in the least interfering with the rights of the rest of the community. All the rest are in the enjoyment of what is their due, so admirable has been the wisdom of the English constitution, and the prudence and foresight with which the structure of our legislature has been reared *. It may be assumed that, as a constituent branch of the legislative power, the House of Peers though not originally formed, yet is now supported, by public opinion.

Considering the great extent of the middle class in Great Britain, the upper class does not increase

* In the days of liberty in Rome, a civic crown was looked on as a high honour, and its possession bestowed a sufficient reward on the most meritorious individual. The existence of a House of Peers, independently of other advantages, may be said to stimulate the exertions of individuals by affording a reward for their services.

In general, the various classes follow the direction of public opinion, the aristocracy amongst the rest: indeed it could scarcely be otherwise. All the old English nobility, Hume tells us, were so entirely destroyed in the wars of the Roses, that one family only, in his time, remained, and that is since extinct. Those, therefore, ennobled since, could scarcely be supposed to entertain other feelings than what ought to belong to worthy citizens, who received a titular distinction: even if a different sentiment had been entertained, when public opinion and civilization began to increase, it followed that aristocratic influence, like all other remnants of despotism, must necessarily give way. It is not here intended to allude to the influence of the upper class, but merely to the influence of aristocracy, independent of property, which cannot exist in a free country, where public opinion has acquired power.

in proportion *, but rather diminishes, from the causes already stated, which is a subject of regret. In a free country, with a perfect equality of laws, an upper class cannot be too numerous, being, perhaps, one of the best safeguards for a continuance of liberty that a community can possess. That this class is not increasing in proportion to the others, and, in fact, that it seems rather diminishing in Great Britain, must be cause of deep solicitude: the same may be observed in France. Let us hope that the great information spreading through the middle class, will make up to the community for this diminution † in the number of persons of large property.

* It is not intended to convey the idea, that the House of Peers have, as a body, any great influence in the state; the upper class of society, undoubtedly, has a very powerful one, arising entirely from its property. Some of the peers may, individually, have weight in the country, from their talent or their property. In fact, at this moment, there is no aristocracy in Great Britain, but in name. The House of Lords is, certainly, one of the constituent parts of the legislature, yet it is so intimately connected with the people and public opinion, that there is no instance, of late years, on record, of its opposing, in a decided manner, public opinion. It is not intended to convey the idea, that the debates in that House are not of importance or interest to the public, but they are so more from the talents of the individuals in that House, than any other cause.

† In proportion as a people become luxurious and commercial, there seems a tendency in the upper class to subdivide. In Great Britain, the effects on the landed property, from the war, alteration in currency, &c. &c., have effected this change materially, so that it more than counterpoises the love of accumulation, and the desire of keeping up a family and the law of freehold inheritance: we may probably have occasion to make the same remark, when we

§ 5. On the House of Commons.

To those who think that the House of Commons, to represent public opinion, ought to be elected entirely by the people, the assertion will appear strange, that it does, as at present constituted, represent the public opinion of the community; but such, beyond doubt, is the case. It is equally certain that it does so more effectually at present than if elected by universal suffrage and election by ballot. It represents, what it ought to do, the property of the country, that is, the upper and middle class of society. If universal suffrage were substituted in the mode of election, none of the property, or two former classes of the community, would be represented, but the lower classes alone; and instead of being the principal organ of public opinion, and of the middle class, it would be that of the lower class, and of popular clamour*.

consider the state of France. It appears there is a tendency in the present day, in the upper class, to diminish, and the middle class to extend, itself.

* We have attempted to shew in these observations, that public opinion mainly depends on the extension of the middle class of society in any country. Now if a popular representation alone, in the House of Commons, were established, the result would be, that numbers would return whom they pleased—the lower class alone would elect the Commons' House, whilst the Lords represented the upper class; and the middle class, by far the most powerful body in the state, in point of property and information, would, in fact, not be represented, and have no voice in the legislature; an anomaly in legislation, the most absurd that can well be imagined.

Before the time that the middle class acquired importance in this country, even after it had raised itself, but before it acquired any power, or, in other words, in the dawn of public opinion, the House of Commons had no influence in the state, and could not act in opposition to the will or caprice of the monarch. Let the proceedings of that assembly under Henry VIII. be considered with attention, or those of the Commons' House under Elizabeth, or at any subsequent time before the revolution, and they will be found of no moment whatever. It will appear that in those days the will of the House was, in general, that of the court. In short, before public opinion rose into importance, the House of Commons was of none; they rose together in power and influence, as will always be the case. The House of Commons was the organ of public opinion, and was supported by that feeling. A house of representatives in a country where no public opinion exists would be an anomaly; such an assembly might be found in name, but certainly not in any other respects. It may also be said, that the converse of this is true, which is, that where public opinion exists, and has power in a community, an assembly having the same sentiments, and representing public opinion, must necessarily exist.

This remark on a house of representatives is made to prove that, notwithstanding what may be said to the contrary, the House of Commons in Great Britain does, in fact, represent the organ of public opinion; it both

influences public opinion, and is still more influenced by that feeling. To those who think that the Commons' House does not represent the body of the people, the remark may appear singular, but is, nevertheless, true. This House, as at present constituted, represents each class and every description of property in the country, more fairly than almost any other assembly of an equal number of individuals that could be selected by the people.

At the time when representatives were sent to parliament by the several counties and boroughs, there was little personal property in the country, compared to the amount which exists at present. The middle class of society was proportionably small and insignificant. Small and insignificant, however, as the middle class and personal property in those days undoubtedly were, yet our forefathers thought fit to permit the representatives of that interest, the members for boroughs, to attend the House of Commons in numbers greater than that of members for counties, which last represented the agricultural interest, and the few tenants of that class that were found in the country. It was not intended to represent a class in which no property was vested; in fact, from the reduction in the value of money, the lower class have, of late years, obtained a greater influence in county elections and in some towns, than was anticipated by the framers of the laws concerning representation.

The intention of those by whom parliament was

called together, even in those rude ages, where personal property and the middle class were of such little importance, when compared to what they are at present, was, that property should be represented *.

Now, supposing it admitted, that the number of members of which parliament was composed a few centuries ago was nearly the same as at present, and the same proportion existed between the members for boroughs and counties as now exists; supposing also, that members for boroughs represented the personal and copyhold property then in the nation, it will be allowed that, since that period, personal property has increased in value perhaps a thousand fold, yet the same number of members represents the same description of property! It follows, therefore, that personal property, and the middle class of society, at present, is not, in fact, so much represented as formerly, and that an encroachment has been made in the right of election of members, by the lower class, from the reduction in the value of money. It may be said, the value of landed property has also increased considerably, and that the same number of members representing the

* This is evident from the simple fact, that a freehold of forty shillings a year, at the time that such qualification was fixed as the minimum of the property of a freeholder, is of much greater amount than would be imagined at present, if the increase of the value of land, and improvement in agriculture, as well as the reduction in the value of money, were all taken into consideration. The possession of such a freehold in those days, would have placed the proprietor nearly in our definition of the middle class of society at present.

landed interest keeps the proportion even. This, however, is not the case. For example, say that, three hundred years ago, the value of personal property in England, when compared to real property, was as one is to five hundred; the value of personal property at present in England, when compared to real property, is as one to one, or on a footing of equality: thus, therefore, the increase of personal property has been five hundred fold, when the landed property has only increased in a much smaller ratio; yet the members of the Commons' House, that are and were in a great measure intended especially to guard and represent personal property, remain the same. It seems but fair to say that personal property in the country has increased in so great a proportion as to require the medium of the close boroughs to be fairly represented, which tend to keep and support the influence of this description of property; yet complaints are loudly and continually made from the landed interest, that they are not sufficiently represented, have not fair play, or that innovations have taken place in the representation, which renders them less powerful than formerly! So far, however, from this being the case, from the foregoing observation, making allowance also for the depreciation of money, and the greater number of freeholds, as observed, into which county representation is divided, by which some of the lower class become electors, the influence of the landed proprietors and the lower

class is greater in county elections than it was intended to be, (considering the extent of property they represent,) by the spirit of the constitution, and by the laws relating to the qualifications of voters for counties made by our ancestors.

It is impossible to separate the interests of the middle class of society in Great Britain, from that of the personal property in the country *; whatever represents the one, will, most undoubtedly, represent the other. Now, to amalgamate as much as possible public opinion with both houses of parliament, it seems requisite

* The increase of the middle class has taken place in consequence of the creation of personal property. In more than nine cases out of ten, where there is great accumulation of personal property, it is generally, either by the operation of law, or by other causes, subdivided, and thus augments the middle class. In other countries where the middle class is not formed by capital, the case may be different, as will appear when we come to the investigation of the state of public opinion in the United States of America, in which country a middle class is formed by the cultivation of land alone, which is not the case in Europe, where the landed property was disposed of by conquest, by bequests to the church, or retained by the crown.

By a singular train of events, it has so happened in England, that the boroughs denominated close boroughs have become so in proportion as personal property has augmented in the country. The close boroughs, it may be said, represent, in parliament, the capital of the country, and take into that assembly their full proportion of public opinion; probably as much as the counties which may return individuals more inclined to favour some particular interest or object, beneficial only to a particular class of the society, but not consonant to the interest of the community at large. Let it be borne in mind, that, within a century, property of immense magnitude, unknown to our ancestors, has been created by trade, manufactures, and accumulation of capital. (Parsimony is the parent of riches. It is by this disposition to save property, that capitals are created, without which the industry of nations and

that personal property in both should be represented, and have a voice in the legislature. This can, in the House of Commons, scarcely be effected otherwise than by the close boroughs *, by means of which those persons who represent the middle class, and the capital and personal property in the country, obtain that to which they are entitled,—a seat in the legislature, by which means, the influence of public opinion spreads itself in the House, and its debates and resolves become more in unison with that sentiment †. It seems

communities could not be put in motion.—COLQUHOUN's *Wealth and Resources of the British Empire*, p. 141.) This has enabled individuals to lend to the state, and to advance capital for the improvements both in machinery and other works carried on. How much further this extension of capital may be carried, it is not necessary here to consider: it is sufficient that such property does exist in Great Britain to an immense amount; that this has mainly brought about the improvement and civilization so remarkable in the community, and has increased the middle class to what it is at present.

* As the close boroughs do not represent any local interest but the great body of individuals possessed of personal property, it may be assumed that the members sent to parliament by such boroughs, represent the public feeling in the country quite as effectually, at least, as any other members. In most occasions, this will be found to be the case. Since the above was written, evidence that the members for close boroughs were in unison with public opinion has occurred, when the late Queen (Caroline) was requested, by the Commons, not to take further steps on a particular occasion, and a deputation was sent to her to that effect from the Commons' House. The gentlemen who took the lead on this occasion, who waited upon her with the address, and who certainly spoke the sense of public opinion on the subject, were members for close boroughs.

† So far, therefore, are the close boroughs from being against the spirit of the constitution, which is, that property should be re-

doubtful whether personal property ought to be represented only in the Commons, but, if properly secured, it might also have its representatives in the other house of parliament *.

One circumstance has arisen of late years that has

presented, that they ought to exist, to afford the capital, the personal property, and the middle class, the means of being represented. Surely it is equally proper for a great capitalist to be representing the other capitalists in the community, by means of a borough that is close, than to have an election in a populous borough entirely dependant on the lower class, with all the attendants of profligacy, venality, &c. &c., so generally the concomitants of such a mode of election. In fact, were such a mode adopted throughout the country, and the close boroughs thrown open in every direction, the result might be, that the upper and lower class chiefly would have the representation, which would be decidedly (particularly in the present day) against the spirit of the constitution, that makes property the chief source of representation.

The representatives for large towns and counties have, occasionally, local prejudices to encounter and advocate. Questions often arise, affecting the interests of their constituents in a particular manner, which may, at times, force them to act inconsistently with public opinion. At the time the question of the abolition of the slave trade was discussed in parliament, there seems no doubt that the abolition of this traffic was agreeable to public opinion. On a reference to divisions on the subject, it will appear that the members for the great commercial towns, deeply interested in that trade, voted uniformly against the measure, that is, against public opinion. This instance is given merely to exemplify the statement, without, of course, impugning the motives or the respectability of the parties who had, it is probable, pledged themselves on the subject.

* The late Mr. Pitt seems to have been aware of the influence of personal property, and of the rapidly increasing power of public opinion, when he stated that admission into the House of Peers ought to be rendered easy to great capitalists (if not engaged in trade or commerce) as well as to the great landholders. It appears that, on more occasions than one, he acted on this principle in the selection for the peerage during his administration.

done more, perhaps, to give weight to public opinion, than any other that can be named. This is so evident as scarcely to need being mentioned,—we allude to the publication of the debates, the advantages of which to the cause of public opinion, of civilization, and to the close and intimate union between the acts of the legislature and the people, is so apparent as to need no comment. No doubt can exist that the publication of the proceedings in both houses, not only assists public opinion in forming its determination, but also enables parliament to ascertain how far its resolves are consonant with the general sentiment of the community, by enabling the members to see the strictures and observations made on the occurrences in parliament*. By

* The publication of the debates is, by the law and custom of parliament, only by sufferance. It is well known, however, that the public at present never could be excluded from a knowledge of what took place in either house: public opinion is too pronounced on the subject ever to permit any old custom to be put in force. Nothing could ever induce either house to act so decidedly against public opinion on such a subject.

This knowledge possessed by the public of the measures of parliament, and the sanction obtained for them from public opinion, enables them to be carried into effect. If the public were excluded from a knowledge of what was the subject of discussion in either house,—if the determinations were not sanctioned by public opinion,—if the people looked on a misshapen building in Westminster as a manufactory for laws, and acts, and imposts, without knowing the reasons why they were passed, or the public necessity for being imposed, it cannot, for a moment, be imagined that so implicit an obedience would be yielded by the community, or that the acts and deliberations of parliament would be as much supported by public opinion as they unquestionably are. When every observation made in parliament, every reason, is laid before the

means of the press, the people are informed of the reasons that induce the adoption of certain measures, and the necessity that influences the legislature in framing new laws, or in determining any particular question.

In former times, the debates not being generally known, could be of little moment to the community, and the influence of parliament depended chiefly on the upper class, the middle class* not being sufficiently numerous. The influence of either house, unassisted by public opinion in those days, must have been confined to a small number. Let us take the period of Henry VII.'s reign, and suppose the members of the Commons to have been as upright, as independent, as much determined to secure the liberty and the rights of their constituents and of themselves as any set of men could be. Unless the requisites for public opinion were extended in the community; unless civilization and a middle class were in existence, how was it possible that such an assembly could contend with the crown, the church, and the barons, who possessed all the land, the only description of property then in existence, and had, therefore, the entire influence; par

public by the publication of the debates: the wisdom or the necessity of the measures adopted are seen by the community. Public opinion and the determination of parliament go together, and the decision of the legislature is, in fact, that of public opinion.

* The members then received a stipend to defray their expenses. This is observed, not to convey any reproach on them, but to show that their means and property were then too limited to give them much influence over the lower class.

ticularly when assisted by the catholic clergy, over an extensive and ignorant lower class. The same observation will apply to the subsequent reign. How could the House of Commons, half a century later, if inclined (which was not the case) to oppose Henry VIII. in his arbitrary acts, successfully make the attempt: unless supported by a corresponding sentiment in public opinion, they had no materials to assist them in erecting such a fabric as the constitution. A century more, at least, was required, to spread sufficiently the requisites for public opinion in the community, the effects of which were evident in the desire manifested by the first parliament under Charles; and the representations made by the several classes of society, to that unfortunate prince, before his quarrel with the two houses*.

The House of Commons, constituted as it is, represents the capital of the country, by means of the close boroughs, and the landed property by the county members, the property of the middle and upper class of society, and may, therefore, be said to be the organ of the public opinion of the community.

This union of opinion and sentiment between public opinion and parliament has enabled the latter to carry on, and the people to support, the most expensive and

* Equally difficult would it be for a set of men, with all the good will and physical force required if sent to open a coal mine, without tools or assistance of any kind but what nature gave them, to accomplish such an undertaking, as it was in those days for the parliament to oppose the arbitrary conduct of the Stuarts, unassisted by public opinion.

protracted wars, which no free state would have borne unless actuated by the same feelings, the same impulse, and the same object,—the welfare and security of the nation.

If any doubt is entertained that parliament * is influenced by public opinion, let any particular period in our history of late years be taken, when the public mind has been agitated by any remarkable event, and let any one ascertain how that agitation has been set at rest; it will be perceived this has been affected by the sentiment of public opinion being adopted by both houses of parliament: the arguments and debates at such periods which may be perused, bear the stamp of such a sentiment, and prove such to be the case. It may be said the proceedings in parliament both impart to, and receive an impulse from, the public opinion of the people. As public opinion increases in the country, less importance may be attached to the sentiment of any one individual either in or out of parliament; but from the circumstances of the legislature being assembled to consider a subject, from the arguments on every question being fully developed, the reasons

* The House of Lords, as well as the Commons, is intended to be included in this observation for this reason; that although it is the king's prerogative to pour into that house a fresh stream of individuals at his pleasure, they are usually selected for their professional services, talents, or fortune, and, in consequence, likely to be under the influence of public opinion: with regard to those who obtain their seat by inheritance, there seems no reason why they should not be as much under the influence of that sentiment as any other individuals possessed of the same property.

amply discussed (perhaps too much so) for or against any measure, and from a conviction in the people, that every means of investigating the subject will be taken *, the deliberations in parliament have much weight in the community. It does not appear, therefore, that by any change that could be made in the manner of electing members, public business would be better conducted, the wishes of the people more faithfully executed, or that public opinion would be both influenced and obeyed better than it at present is by parliament †.

It seems an equitable principle, that the right of taxation should, in a great measure, belong to those classes who are most interested in the measure by

* The discussions in parliament, on any question of importance, bears some resemblance to the arguments of the counsel and examination of the witnesses in a court of justice, when, after the most ample deliberation, and the charge of the judge, the jury return their verdict: in the same manner, after a question has been thoroughly investigated in parliament, public opinion pronounces a final decision.

† In what is said, no allusion, of course, can be made to individuals, but to the manner in which the members are placed in parliament, which is either from their property or their talents. If the upper house consisted only of persons who inherited their seats from their ancestors, and was not kept up by a constant addition, if the House of Commons were elected by universal suffrage, that is, by the lower class, it is evident there could be less chance of a sentiment like public opinion in such an assembly. The former might, in time, be influenced by the executive; the latter, by the feelings of the lower class only: the result would be, that the most powerful body in the state, the middle class, would not be represented. An assembly so formed, little influenced by public opinion, could not exist in opposition to it.

having property, that is, the upper and middle class, and the part of that lower possessed of some income *.

If the representation by universal suffrage were allowed, an assembly so elected could only represent

* An idea has been entertained by some, that if close boroughs were deprived of their elective franchise, and it was transferred to populous towns or counties, the House of Commons would be more in unison with the people. Such a step might be taken in those boroughs where corruption has been proved in the majority of voters, but certainly not in other close boroughs, for the reason already given. The close boroughs represent the capital in the country, of which the middle class are the great proprietors; if the boroughs were thrown open, it would be placing the elective franchise in the lower class.

In large towns or counties it is usual to have two parties opposed to each other. When an individual is returned by either party, he thinks it incumbent on himself, and feels bound in honour, and by gratitude, to vote in accordance with the feelings of the party by whom he is returned. So circumstanced, a member may be prevented from voting with public opinion, or in accordance to his wishes, as much, and probably, more than the individual who is not indebted to either party for his seat, who is returned only by his own property, and who is accountable only to the public and himself for his vote and conduct, who, therefore, acts with more freedom and accordance with public opinion. It might happen that the member for the former place may be obliged to follow popular clamour instead of public opinion.

† Such an idea has never been sanctioned by public opinion, although it may have brought into notice by popular clamour. If universal suffrage means anything, it means that every individual of the age of discretion in the community should be entitled to vote for a representative. In every country in Europe (perhaps in a less proportion in Great Britain) the lower class, in numbers, form the great majority of the population; it follows, therefore that universal suffrage would throw the power of representation entirely into the hands of the lower class; that is, into the hands of those who, from want of time, want of education, and, consequently, of knowledge on the subject of legislation, must be the most unfit for

the lower class *, and not follow public opinion, which,

that purpose, and the most likely to substitute and adopt popular clamour for public opinion. When once public opinion in a country is kept under, and the lower class obtain the ascendency, it is well known, and can be proved by many instances, that they are to be influenced by their passions, or their interests, and can be led by some artful or factious individual. The influence of the mob generally ends in despotism. It was often the custom, formerly, to illustrate some doctrine, or confirm some opinion by examples drawn from the ancients, which the superior judgment and sense of the present day has, in a great measure exploded. Perhaps, however, in the present instance we may be allowed to allude to the observation of a celebrated French writer, (Montesquieu) on the spirit of laws, who asserts that the loss of liberty at Rome, arose from the permission granted to the people of a neighbouring district in Italy, to vote with the Romans at their elections, by which means so great a corruption took place, that the decline of the Commonwealth was the consequence. Without laying much stress on this instance, as our constitution and that of Rome may be rather different, and the power of public opinion, and consequently of liberty, too great to be easily overturned, we give it as an instance of the injury done in those days to liberty, by allowing the rabble of Italy to have any thing to do with the elections.

* Although property, or rather its influence, is the main spring by which the House of Commons is filled, it does not appear that a better mode could be adopted, or one that would elect individuals more respondent to public opinion. If the lower class, by means of universal suffrage, returned the members, the individuals selected would be either those who by the means of flattery, or activity, or undue exercise of money, had influenced the lower class, or who, taking advantage of some popular clamour, and the weakness of an ignorant multitude, could turn it to their own advantage, and to gratify their ambition and love of power, would sacrifice the best interests of their country, and the liberty if not the lives and property of their fellow subjects. Men, having everything to gain and nothing to lose, would find their way into the House, who would be ready to sacrifice the constitution of their country, who in such an attempt would most assuredly find means to be supported by popular clamour, and by the lower class of society.

In

as already shewn, depends chiefly on the middle class*. If, in former times, the personal property in England, small as it was, could be represented, it surely deserved to be so in this day, when so much increased as to be the most extensive property in the nation.

That personal property, in the present day, should

In proportion as wealth spreads through the country, the middle class augments, and may perhaps in time wholly absorb the upper. How far such an occurrence will affect our constitution it is not the province of these inquiries to determine. That such an event would be much sooner accomplished by permitting the lower class to legislate, cannot be doubted. Again, to quote an instance from the ancients, though reprobating the custom,—it appears that in the early days of the Roman Republic by the establishment of Numa Pompilius, universal suffrage was not thought compatible with perfect liberty. He divided the people of Rome into so many tribes according to their property; each of these had the right of voting in the deliberation of affairs that concerned the Commonwealth: even in those rude ages property possessed influence superior to numbers in legislative deliberations.

* It has been said, and with some appearance of truth, that the disadvantage of the close boroughs is, that the minister of the day can obtain by their means a majority to support his measures, which might be contrary to the interests of the country. It is not denied that a minister may be inclined to act improperly; but it is very doubtful whether in such an attempt he would be supported more by the members for close boroughs, not under the control of government, than by the members for more populous places. On refering to the principal events that have occurred in England for upwards of half a century, it will appear that no important measure has been attempted by a minister, or sanctioned by the Commons, that was not at the time, in some measure, supported by public opinion, or at least not opposed by that sentiment. So powerful has the power of public opinion been of late years, so much has it been attended to and respected by the government, that scarcely an attempt to act against it has been made; and if any circumstance has pronounced distinctly the sentiment of the public

not, under such circumstances, be represented by boroughs, would, indeed, be strange, when it has increased a thousand-fold, and when our ancestors thought proper that such property should be represented by nearly the same number of members when it was almost in its infancy, and of comparative small importance in the state *.

The strength of public opinion, it seems, influences the deliberations of parliament †, and in proportion as

when it was not before ascertained, such sentiment has always ultimately prevailed. Instances of this are to be found on referring to the acts of any minister for some time past. Perhaps it has happened that the minister has attempted to influence public opinion, by giving it an impulse and acting accordingly. Even such being the case, does not alter the fact. It is not stated, or insinuated that public opinion has never been influenced; but that it possesses a powerful influence on, and has never been of late years directly opposed by the government of this country.

* It may be said that the close boroughs only represent the large capitalists, and not the mass of the middle class. The fact is, the close boroughs, in general, represent the capital or personal property in the nation, the great bulk of which belongs to the middle class, and, therefore, that the property of such class is by that means represented.

† It seems that a reform in the representation would, in fact, be unsupported by public opinion, although popular clamour would be in its favour. If public opinion influences parliament as much as is requisite, it seems that public opinion, having such influence, cannot wish for a change in the mode of representation. There may exist some impression on the public mind, that the duration of parliament for seven years is too long a period, and that one year is too short. Perhaps the duration of three years, formerly established, would be the length of time most likely to meet the public sentiment on the subject. True it is that the act which extended the duration of parliament from three to seven years was not adopted without deliberation, and that such alteration has been unattended with any of the injurious effects to the constitution that

the requisites of public opinion extend themselves, it seems probable the influence will be in proportion. It is difficult to suppose it otherwise. When civilization, equality of rights, security of person and property, and the requisites for public opinion are more general, such a result must naturally take place, because an equality of information, of talent, and of wisdom, then exists in the community; it is evident the opinions and decisions of six hundred or a thousand well-educated men, will be much the same as those of any other thousand well-educated persons. In other words, it is not this or that set of persons that decide on any important subject; it is the united sentiment of the well-educated, possessed of the other requisites already so often mentioned: it is public opinion that forms its determination on any question.

were anticipated at the time by its opponents. It is true also, that the present duration of parliament has existed for upwards of a century, and that if any evil was likely to arise from such extension it would be perceptible before this time. Notwithstanding this, where no essential advantage arises from a measure, and where a sort of jealousy exists in the community in consequence, the reasons for such an alteration ought to be very strong to sanction its continuance. Provided, therefore, it was distinctly understood, that no change in the mode of elections was to take place (except in those boroughs where bribery could be proved against the majority of voters), there seems no reason for not returning to the former triennial parliaments, a measure that would be hailed by the people, and sanctioned, though not demanded by public opinion.

6.

When a community is influenced by public opinion, there is less probability of any undertaking being attempted likely to prove injurious to the welfare of the mass of individuals of which it is composed. The object of communities, as well as individuals, is to improve their situation, which is the leading motive of exertion in mankind. It seems, therefore, that the prevalence of public opinion may be the cause of hostilities between nations not being so common as in days of ignorance. The weakness of human nature, and the ease with which the passions or interests of men influence their understanding, are such, that, if a state of war with another nation was an object of advantage to a people, popular clamour might be induced, and a government might be willing to act accordingly. But when the question of hostilities depends on the public opinion—when the people are sensible they are more likely to lose than to gain by entering into a war—when the individuals of those classes that most influence public opinion, are aware that the pressure of taxation will be felt, more or less, in consequence, the community will not permit themselves, as in former days of ignorance or barbarism, to worry and attack their neighbours for mere pastime, or to gratify their caprice or warlike inclination *. To this it may

* In proportion as public opinion has obtained influence, the inclination for war is less in a people. In a savage state, or in

be said that public opinion has been prevalent in Great Britain, yet that hostilities have, until within the last few years, been incessant. This is true; but the wars carried on were caused by the apprehension entertained of an ambitious foreign power, and were, on that account, supported by public opinion. It is preposterous to imagine, that if public opinion had been satisfied in this country, there was no danger to be apprehended from France, either to our independence or industry, that any minister could have forced the country to continue hostilities against the sentiment of the people*.

pastoral tribes, it arises from necessity, from want of sufficient space, from having a population, though scanty, yet scarcely able to subsist, and desirous, therefore, of obtaining the means enjoyed by the neighbouring tribe. In civilized nations the case is entirely different.

* When the state of civilization, arising from the requisites for public opinion becoming general, is considered, the fallacy of judging from analogy will be apparent. To argue, that because war has desolated Europe almost without intermission, longer than the memory of man or history can record, it will be as frequent in future, would be judging erroneously, and not making sufficient allowance for the present state of civilization and power of public opinion. Wherever the sentiment has influence, it is evident there will be no inclination to enter into a war, except from apprehension of danger or hope of advantage. As other nations become civilized, neither of these causes are likely to occur; on the contrary, communities will be benefited, in general, by an interchange of commodities. The expenditure, in most cases, attendant on hostilities, will be greater than the advantages obtained; public opinion, therefore, will be for peace. Those nations where public opinion is extensive, from the nature of things it must be (*cæteris paribus*) the most powerful, and, consequently, have the choice of abstaining from hostilities, if so inclined.

Every class of society in Great Britain enjoys equal rights, equal liberty, equal security of person and property *. The several classes are so blended together, the link that connects one to the other is so imperceptible, that, in many cases, it would be difficult, even for an individual himself, to determine precisely to which class he belonged. The means of obtaining admission into any class are open to the industry or talents of all. It happens, and is no uncommon event, that an individual is enabled, by conduct, industry, or good fortune, to rise from the lower to the higher

* It is evident that, in a free and civilized state, the only power is the command of labour, or, in other words, property. It seems difficult to say how such an influence could be prevented, even if desirable. The influence of property is, however, a sort of power as innocuous as can well be imagined. Wealth can do good when distributed, can employ those in want of employment, and encourage industry, but can do no harm. The power afforded by property in a civilized state can only confer benefits, but do no injury. A man possessed of wealth may do some good if inclined, but if desirous to act otherwise, he can do no harm; although his good will may be of service, his resentment does no more harm, than that of the meanest individual in the community. Such is the innocent influence of the upper and part of the middle class, and such it is desirable they should always enjoy. This may be called the legitimate influence of property. In old times, a feudal baron had a certain power, he might do good, but could also do harm; this could only exist in barbarous times, under a despotic monarch. In the present day, an individual of large property has only the means of promoting the welfare of his neighbours or dependants; he can do them no injury more than the poorest person. Such are the advantages brought on by civilization! Delolme, in his *Essay on the Constitution of England*, with admiration says, "No one in Great Britain ever sees the man on whom depends his property, his life, or his liberty."

classes: the means of obtaining and accumulating capital are attainable by persons of every description. Under such a state of things, and the prevalence of public opinion, any sudden convulsion or dissension between one class and another is out of the question. In these observations on the state of public opinion in Great Britain, considerable stress has been laid on the influence of one class, because such influence, in our opinion, really exists *. We hope not to be misunderstood and supposed desirous to advocate the interests of any one class more than another. Taking into consideration the situation in which the community in this

* "A revolution against public opinion would be an absurdity in the present day." If an alteration was desired by public opinion, it follows, of course: any sudden rising of one class against another is impossible. No prescription, such as took place in Rome, could occur; no preponderance of an infuriated lower class, as in France, could take place. It may be asked, supposing a difference of opinion were to exist in public opinion on any particular question, what would occur? Supposing this, which is highly improbable, it must be recollected that public opinion does not resemble a question mooted between two individuals, where their passions or interest may be excited. A question is discussed by public opinion dispassionately, and at leisure, and is not one where considerable diversity of opinion is likely to arise. The opinion of the author of the *Essay on Population*, (Mr. Malthus) on any subject, however, is of weight, and ought to be stated. "Late events must make us contemplate with no small alarm, a great increase in the proportion of our manufacturing population, both with reference to the happiness, and to the liberty of our country." With all due respect for Mr. Malthus's opinion, it seems, that if the improvements made in machinery were not in use, a greater number of persons employed in manufacturers would be requisite, than at present, to create the same amount of goods. The use of machinery, by serving as a substitute for manual labour, prevents such a population as Mr. Malthus dreads; besides, from this arises

island is, at present, and may be in some years, we are of opinion, that, for the support of the constitution as now established, the upper class is not sufficiently extensive in proportion to the middle class. Whatever, therefore, tends to strengthen and increase the upper class, is likely to secure the permanence of our constitution *, which, although not exempt from those imperfections to which all human institutions are liable, may be considered as the most perfect that the wisdom or ingenuity of man has been able to contrive. Long may it continue!

wealth, and a number of the middle class are created, which more than counterbalance such a population.

* The form of government, in a civilized state, and the existence of a monarchy or republic, depend much on the relative proportion of the upper and middle class. Where much property, and, consequently, power is in the upper class, an upper house and a monarchy are more permanent.

It may be said, that even in a county where public opinion is powerful, a revolution might be brought about by the union of an armed force, (if one existed) and the second part of the lower class. Such an union would be highly improbable; but even if it took place, could effect little in a country where so extensive a middle class exists as in Great Britain, which would also be strengthened by the first part of the lower class. The individuals of the lower class, if possessed of some property (though not sufficient to place them in the middle class) and of the requisites for public opinion, become as much the supporters of this sentiment as the other classes. An armed force could do little against the upper and middle classes so supported, ever jealous of the least infringement of what they esteem their rights, always alive to their security, and, by the facility of communication and the information from the press, able to convey their sentiments through the community.

Chapter V.

§ 1.

State of Public Opinion on the Continent of Europe.

When the improvement that has of late years taken place in many parts of the European continent, and the quick steps with which civilization is advancing, are considered, and how much yet remains to be done, the mind feels at a loss, whether most to deplore the length of time that those countries, some of them blessed with every natural advantage, have been in a state of ignorance, nearly allied to barbarism; or to rejoice at the progress of civilization that is daily taking place, which it is probable cannot now be checked, and which ultimately tends to results as satisfactory to the inquirer, as they are beneficial to mankind.

Before we commence our investigation on the state of public opinion on the continent, let us for a moment reflect, why Great Britain has been so fortunate as to precede those countries in the establishment of public opinion, of wealth, and in all the advantages of civilized life. The answer to such a question would probably be, because we have longer enjoyed the blessings of liberty, of proper religious principle, of wealth, of equal laws, and of other advantages. Still, however, the

question remains unanswered: it then resolves itself to the inquiry, why the English have enjoyed those blessings before other nations of equal discernment, and more favoured by soil and climate, and desirous as every nation will naturally be of enjoying liberty, and the influence of public opinion.

These benefits were early obtained in England, partly in consequence of its insular position, which, whilst it kept off the apprehension of foreign invasion, enabled the people to turn their activity to commerce or manufactures, and, consequently, to augment the capital of the country. The former kings of England could not succeed in persuading their people that they were in danger of invasion, and by that means answer the twofold purpose of raising an army, and obtaining supplies, and also of diverting the attention of the people from the redress of grievances, or the conduct of the government. The English, losing sight of foreign invasion, had time and means to attend to their domestic polity, and by their activity and commercial enterprise to create capital. On the continent, however, the case was different: the king or emperor of any state who desired to divert his people from scrutinizing too closely the limits of his authority, had a certain resource in undertaking a war; it was only to take offence, real or imaginary, at the conduct of some neighbouring despot, equally anxious to promote a quarrel; to war went the two nations. The kings gained an increase of power, if not on their neighbours, at least, on their own people, and obtained besides subsidies and supplies: the superior officers pay

for promotion, the others came in for their share of the spoil either gained on the enemy or squeezed out of the nation, and the enslaved, ignorant, and brutal people, bore all the privations and sufferings, and the expenses, the usual concomitants of war. The kings on the continent (no particular allusion to any state is intended) found this game so profitable, that few if any had sufficient virtue, or love of their people implanted in their breasts, not to promote it by all the means in their power. Such a system strengthened the executive government, by the supplies obtained from the nation, and by the influence of the army dependant on the will of the king. The upper class, consisting of feudal barons, were obliged to follow their kings to the wars, were kept in a state of dependance and poverty, and, by residing in a camp, acquired habits of submission to the king's authority, and of reliance on his bounty, which was increased by the neglect that naturally took place during their absence from home, in the management of their private concerns, and the expense of living in courts or camps. A middle class, at that time, scarcely existed in Europe, and unless activity and commercial enterprise were encouraged, how could such a class be formed; whereas the wars in which the people were engaged, not only checked such a spirit, but rendered the accumulation of property so insecure as to be scarcely worth obtaining. The lower class were then too ignorant to form an opinion; if they acquired habits of industry, these were quickly eradicated either by the idea of glory or conquest, or by the apprehen-

sion of invasion, easily excited in those days. Under these circumstances it is scarcely any subject for wonder, that despotic power ruled on the continent, or that the people for such a series of years remained in a state of ignorance and poverty, and, consequently, entirely dependant, without any security of person or property. If the influence possessed by the catholic clergy, from the numbers and from the property of the church, whose plan it was in general to support and strengthen arbitrary power, and to retain the people in ignorance and poverty, be taken into the account, the surprise may be, not that nations should remain so long in such a state, but how they could overcome these obstacles, and obtain information and power sufficient to emancipate themselves from this system.

The desire of improving his condition, so natural to man, seems to have effected this; assisted by the activity and spirit of commerce and enterprise, expanded from many circumstances, not necessary to enumerate *. At present, public opinion is in existence, and gradually gaining strength in many countries on the continent. A middle class of society is rapidly rising into numbers and importance, and their strength and power is increasing ever hour.

* It seems natural to man to exert himself the moment a reward for his industry is held in view. The savages of the South Sea Islands, if not discovered, might have remained for thousands of years, "to draw nutrition, propagate, and rot," had they never been visited by European or civilized people; but the moment security of property was established, and they acquired a certain moral principle drawn from the precepts of the gospel, there is no doubt but

Before we enter into the consideration of the subject, as regards each particular state, it may not be improper to make one remark on the wars that were waged almost without intermission in Europe, which, it has been observed, tended as much to strengthen the power of the rulers, as to degrade the condition of the people. The moment that a powerful middle class of society is formed, that civilization has increased, and, consequently, that public opinion has power, hostilities between nations are not so likely to take place. It is quite certain that when a community possesses a knowledge of its own situation, is able to discern its own interest, in short, is under the influence of public opinion, it will not be induced either by its rulers, or by any hasty resolves, to act in a manner injurious to its own interests, or to do what is likely to diminish its capital or its liberty. In the present day, no war * can be carried on but at an enormous expense †; no nation therefore can enter into a contest, particularly if it be one of aggression, without

that the desire to improve their condition exhibited itself, and its natural consequences, activity, civilization, and creation of capital.

* The expenditure attendant on modern warfare, particularly that of aggression or attack, is well known. As improvements in the art of war take place, it seems probable that the expense attendant on hostilities between civilized nations will also increase.

† In the present day, nothing in war can be done without money or credit, which is not likely to be wasted where public opinion has influence in useless attacks. In former days, no magazines were requisite, no battering train or artillery was in use. A general, in those times, led his army into the enemy's country without expense; they plundered in every direction, carried away as much booty as they could obtain, lived at free quarters on the people. In such an

great expenditure, which expenditure must be produced or taken from the people by whom the army is equipt and provided. That such expense must be raised and supported by the people who go to war, and who fit out the armed force, is clear to demonstration. Some particular instances may be quoted, where nations who sent out armies, even in modern times, have not felt the weight of the expenditure as heavily as might be imagined; but those are extreme cases, and not likely to occur again *. Even the most brilliant success must be paid for by the people, and it will always be uncer-

army, many died of want, many of disease, and the rest that escaped these, and the sword of the people or the enemy, returned home with whatever spoil they had obtained. Such seems to be an epitome of the wars carried on by the nations of Europe against each other before the invention of gunpowder: after that period they were, for a time, much the same. Afterwards it was found necessary, as improvements in gunnery advanced, to enter into more expense; and of late, so much has the art improved, as well as the population of the several nations increased, that an army cannot be set on foot without great expenditure in its outfit, and a still greater in the establishments of magazines, &c. &c.: the former absolutely necessary to prevent defeat; the latter to prevent the plunder of the inhabitants, and their consequent hostility to an invading army.

* The case of the French during the republic and under Napoleon, may form an exception, as under both governments the armies of France, it is said, were supported by the enemy. Although this may be the case, of which we are doubtful, yet if true, it is only an exception to the observation. At the breaking out of the Revolution, and in the subsequent wars under Napoleon, Europe was in a situation such as it is not likely she may ever again be placed in. The great mass of the people, in almost every country in which the French penetrated in the early period of the war, were in a state of revolution, and generally, at first, were favourable to the arms of the French. In what is said above, it is taken for granted that public opinion has gained some ground, and, therefore, that an invasion

tain whether such success can make amends to the nation for the weight of taxation, or for a debt that must be incurred *. When public opinion once obtains the ascendency in a country, it does not appear that, under ordinary circumstances, hostilities of one nation with another, will, in consequence, be so favourite a pastime amongst the several rulers of nations in Europe as it was in former ages. Public opinion, which has sprung up, will advance, in most countries, in an accelerated ratio, from the creation of capital by the manufacturing and commercial industry; by the increase of the middle class, and by the extension of the other requisites for public opinion.

Before we enter into the subject of the several communities of which Europe is, at present, composed, let

would be opposed by the people, and, consequently, that, if attempted, it must be carried on at the expense of the invaders. For some time the war with France might have proved profitable to England, as it augmented her carrying trade; but such a state of things is not likely to occur again for a length of time, if ever.

* These observations must be taken as made generally, merely for the purpose of illustrating the position, that when public opinion is established, the probability of frequent war is not so great as formerly: no allusion is made in any manner to any state or place in Europe. They are intended, previously to entering into any remarks on the nations of the continent, merely to show the change of system likely to take place. This assertion must, of course, be understood with certain qualifications; and it will be remembered, that public opinion, as yet, is not so firmly established on the continent, as to prevent the possible recurrence of wars: however, it must be allowed that it appears probable, that, in proportion as public opinion extends itself, the communities, in some measures, being the masters, will not be led into hostilities against their wishes, and still more not against their interests.

us, for a moment, make a digression to the former states, where liberty and a sort of public opinion was thought to exist, the republics of Greece and Rome, and take the opportunity of answering the question that may suggest itself,—why these republics, if civilized, should be overpowered by barbarians, lose their independence, become subservient to their conquerors, and relapse into barbarism? What is said of the republic of Greece, will apply, with little difference, to that of Rome. It seems, from the works of art which we know existed, and from the productions of the poets and orators extant at this day, that some civilization existed in the republics of Greece, and that advances had been made in the arts. It appears, also, that there was a sort of middle class of society, if, in those times, it might be so called, with scarcely any upper or lower class; the work of the latter being supplied by the slaves. The situation in which the several classes of society stood with regard to each other in Greece, seems to confirm what has so often been repeated, that whenever civilization makes its appearance, a middle class in the community appears also, almost as a matter of course. Now, although civilization seems, to a certain extent, to have been in existence in Greece, and something like public opinion to be found, yet the requisites for public opinion, such as we have defined them, were not in existence. Proper religious feeling, or moral principle, was unknown; the precepts of Christianity were not promulgated; and most unquestionably, unless these precepts are both known and

obeyed, no community can be influenced by a proper religious feeling, or true moral principle, and public opinion remains deficient. Facility of communication was also wanting, as well as the means of dispersing and cementing public opinion, and of diffusing information in every quarter by means of the press. Under such circumstances, the civilization in Greece was not complete. No moral principle, no means of imparting or extending information, no facility of communication existed. So circumstanced, a small community, surrounded by barbarous nations, and only partly civilized, so as to have a middle class with some knowledge of the arts, but no other requisites, was unlikely long to withstand internal commotions, the jealousies of its neighbours equally civilized, or the attacks of barbarians eager for plunder.

Nearly the same reasons, with few exceptions, will apply to the fall of the Romans, after their empire had extended itself in so surprising a manner. The Roman commonwealth appeared constituted for a people likely to be civilized; a division is made at once of the people, into an upper, middle, and lower class*. The middle class increases as the republic extends its conquests; some of the lower class are enabled by degrees to enter into the middle. All this renders the idea of war and conquest palatable to the people, particularly as their discipline and knowledge in the art of war

* Senatus, Equites et Populi. The several rules of the Roman republic are so well known, or so easily obtained, as to render it unnecessary here to enter into any particulars.

afforded them an easy conquest over the barbarians. Thus incessant wars were waged, and, with occasional vicissitudes of fortune, the discipline and valour of the Romans enabled them to overcome all opposition, and to conquer the barbarians by whom they were surrounded.

Thus things continued: but, after a considerable lapse of time, the middle class, which had been continually increasing, at length becomes stationary, for this reason,—that as long as the wealth of the conquered nations was obtained, so long could it increase: but as there was no trade or manufactures, this could not continue after they obtained the gold and silver, or other metals then in the world, so that, after a time, the extent of their conquests brought no further wealth to Rome. The natural result, where no capital is constantly created by commerce or manufacture, took place; the people extended in population, and the lower class becoming powerful in proportion to the others, the army elected a favourite leader for emperor, the upper and middle classes were overcome, and liberty, such as it was, extinguished. As in Greece, the requisites for the formation of public opinion were wanting in Rome. That great and essential requisite for public opinion, a proper religious principle was unknown, facility of communication did not exist, and whatever tendency for public opinion was created in the minds of the well-informed and intelligent, was lost for want of the materials, that is, sufficiency of intelligence, and moral principle in the community. Under such a state of

things, it seems not surprising that so little public opinion should have been found in Rome during the reigns of the emperors. A people with an extensive lower class, a small upper and middle class, with no information, moral principle, or facility of communication, were not likely to secure, by the sentiment of public opinion, the blessings of liberty. It appears, accordingly, that Rome sunk gradually into a despotism, usually the case, where the requisites so often mentioned are deficient, and a lower class exists great in proportion to the other classes, the whole people ignorant, and not sufficiently industrious to create capital.

That such a state should ultimately be invaded and conquered by barbarians seems not surprising. In those days Rome was probably the richest country in the world; the manner of carrying on war differed entirely from what it is at present. Before the use of gunpowder, a battle was likely to be gained by the most numerous and ferocious, and, consequently, by the army that was most inured to hardships, and composed of men who had the greatest physical strength. The habits of discipline, the military ardour and enthusiasm, and that sort of Pagan virtue that enabled the Romans, during the time of this republic, to command their victories, were at an end. The desire to improve their condition, that stimulated the soldiers in the times of the republic, no longer existed; the soldiers, under the emperors, consisted of the enervated rabble of Italy, unable effectually to cope with

the barbarians of the north; at length the empire was overturned. These were the causes that led to the fall of the Roman power, and which would, under similar circumstances, have occasioned that of any other empire. In the present day, however, when requisites for public opinion are in existence, when, by the stimulus given to the industry of individuals, and, therefore, of nations, every year adds to the capital of a country, and, consequently, to its civilization, and, in all probability, to the increase of the requisites for public opinion, there seems to be no probability of decay in a nation. But the very reverse of this was the case at the decline of the Roman empire; the upper and middle classes in Rome were, as observed, sinking into the lower class, which last became poorer, in proportion as it augmented in numbers, not having the means of creating capital. At its declension, the Roman state appears to have been retrograding in the scale of civilization, in the same manner as the nations of the continent seem at this day to be raising themselves. In the former, idleness, and, consequently, poverty was general through the state; all the sentiments that may be expanded in the human mind, and that may bloom in civilization and happiness, were diminishing gradually; in the present day they are, on the contrary, gradually expanding. In no respect, therefore, can any parallel be drawn between the state of the ancient republics of Greece and Rome, and the continental states in the present time. All the great and leading principles now to be found were

then wanting. It is also particularly observable that, in former days, in proportion as a nation became wealthy and civilized it became effeminate, and, consequently, less likely to prove a match for its warlike and barbarous neighbours; whereas, at present, the more civilized any nation may be, the more wealthy it becomes, the more powerful does it prove, and the more easily is it enabled to repel the attacks of others, and to combat barbarians with advantage, from the change in the art of war by the use of gunpowder, and other causes. The very reverse, therefore, of what then was found, by experience, to be the case formerly, is so at present; and this proves a powerful safeguard for civilization against barbarism, for free and enlightened states, where the requisites for public opinion are found extending themselves against the blind or fanatical obedience paid to a despot by his slaves, which enabled them, in former days, to devastate and ruin the fairest portions of Europe.

Thus it seems probable that communities which are civilized will be more inclined to remain at peace, and extend their industry and commerce than formerly, in consequence of the prevalence of public opinion. It cannot escape observation, that these will increase in an accelerated ratio with the creation of capital, and with the requisites for that sentiment and civilization*. That such an effect follows, seems be-

* As it has been observed that one of the causes that civilization began earlier in England than on the continent arose from our position as an island, another reason may be added, taken from an

yond doubt; that the result will be the downfall of arbitrary power, and the establishment of free and liberal forms of government, is equally certain. This desired consummation may take place sooner in some than in others, in proportion as civilization and the requisites for the formation of public sentiment are found. Judging of the future by the past and the present, civilization seems to advance in so quick a proportion, that no exact period can be specified; but that such is the ultimate result, seems as certain as any occurrence that can take place in human affairs.

§ 2.

On the State of Public Opinion in France.

THE same measure for public opinion that has been applied to England, will apply equally to France, or to any other country of Europe, or of the world. In proportion as the requisites for public opinion are found in

observation made by the author of the work on the Spirit of Laws, Montesquieu, that such civilization was assisted by the climate. The former circumstance took away the apprehension of invasion. The cloudy atmosphere of Britain encourages, perhaps, industry and persevering occupation, more than the elastic and vivacious air of the continent, which may, also, render the people more inconsiderate, and less prone to attend to political events.

The facility of communication, that has of late augmented so much, and is daily increasing by accelerating the mutual interchange of commodities between nations, certainly makes them more averse from war, and adds to the power of public opinion in favour of peace: in the event of hostilities breaking out between two people who have been mutually taking each others' commodities, great inconvenience and loss would eventually be sustained.

any community, in the same proportion will such a community be liberal in its government and its institutions. We must ascertain how far information, proper religious feeling, facility of communication, or, in other words, how far civilization and the middle class have extended in any country, to know the extent of public opinion.

Formerly in France, say in the reign of Henry IV., or even as late as Louis XIV., there existed scarcely any middle class; the noblesse* and the church, with the crown, possessed almost the whole of the property in the nation. The lower class was then profoundly ignorant, was attached to, and may be said to have vegetated on, the soil; and the same system of feudal power, before mentioned, supported by an intimate connexion between the church and the crown, existed in the community. By degrees, as in England, but in a less ratio, something like a middle class sprung up. It was brought into existence chiefly by the capital created in the large towns, in manufacturing districts, by an external† and internal trade, arising from colonies, from roads made, and canals opened, and from the facility of communication easily obtained in that highly-favoured country. Under such circumstances,

* This word is used instead of nobility, as the latter to our ears would not convey the precise idea of the French nobility as it then existed in France,—an entirely separate class, exempt from taxes or public burdens, whose only occupation was to follow the king to war.

† The colonies that France obtained in the East and West Indies, America, and other quarters of the globe.

it was impossible for a middle class of society not to be formed, and that it should not increase. Although its increase might not be equally rapid, in proportion to the other classes, as it was in England, yet, from the middle of the reign of Louis XIV., the rise of such a class was clearly discernible, which continued gradually to increase in a slow and almost imperceptible manner until the first appearance of the revolution. Some few attempts it seems were made by the middle class, previously to that event, to define the power of the crown, by the contests between the parliament of Paris and the executive, concerning the registry of the king's edicts. These generally proved abortive, and the whole and absolute power of the state was vested in the crown, kept up by the noblesse, (which could scarcely be called the upper class, not being estimated by property, but by family,) assisted by the church *. In the middle class might be enume-

* Within a century, how singular has been the change in public feeling (it could not be styled public opinion) in France towards the king. Formerly, the French regarded their monarch with a sort of respect and regard, of which, in the present day, an adequate idea can scarcely be formed. During the long wars of Louis XIV, the people of that country submitted to every sort of privation, not only without a murmur, but with cheerfulness. They were willing to give up their last morsel of bread, and to expend their last farthing to enable him to carry on the war, and to support him and his court in a style of oriental magnificence, which, compared with the poverty of the nation, must have formed a striking contrast. It appeared as if the happiness of the nation, and all they held most dear, was interwoven with their monarch; and each individual seems to have felt what occurred in the king's family, as keenly as if it had happened in his own. Such were the feelings that filled

rated all the possessors of land who had purchased their property within a certain number of years; all the lawyers, physicians, counsellors of the several courts, merchants in the capital, in the commercial and trading towns; in short, all those individuals in France of a certain property who had received some education, were possessed of information, of activity, and of course of a certain ambition. These were the persons likely to give power to public opinion, and to influence the lower classes of society throughout the kingdom. These individuals, by an inconceivable folly in the government, were not permitted to enjoy the same rights, and to partake, under any circumstances, of the same privileges as the old noblesse, and were, consequently, decided in their condemnation of the abuses in the government and tyranny of the crown: these seem to have given the first impulse to public opinion concerning the revolution. In the year 1780, this class in France formed a formidable body, not only on account of their property and numbers, but because they possessed

every breast, from the highest to the lowest, throughout the kingdom, and thus it continued until the seeds of the revolution began to germinate. Such a feeling might have continued with a generous people like the French, even with the establishment of public opinion, had the crown been sensible of the rise of the middle class, and of the necessity of granting equal rights and equal justice; in short, had it taken warning from what occurred in England. When the revolution began, it was too late; the middle class had excited the lower, and could no longer direct or influence the result. The lower class, like a rock on the declivity of a mountain, would, probably, remain at rest; but if once set in motion, it required a greater force to stop them than to give the impetus: in France, this was the case with the middle and lower classes.

almost exclusively all the information in the country *. The persons of this class were unable to improve their condition; no merit however distinguished, no services rendered to the state however great, no virtue or talent however splendid, could entitle such individuals to enter into the noblesse, a class whose privileges were supported by the court, and by the prejudices of an ignorant people.

The middle class in France, before the revolution, were much in the same situation as the middle class in England under Charles I., previously to the civil war. They perceived great abuses in the state; they found themselves in a situation inferior to what from their property they were entitled; they wished to define the power of the crown, and to secure their rights and privileges: yet the existing government in France were so besotted, as not to take warning by the example held out by our civil wars, and refused to grant voluntarily, that which the middle class would not be denied,—limit to the power of the crown, and the right of all to aspire to the highest situations or rank in the state, if qualified by talents,

* The noblesse being chiefly intended for the army, had generally but indifferent educations, except some of the younger sons intended for the church. The lower class were far from being barbarous, but were very ignorant, and seem not to have been so much influenced by the clergy as might be imagined. The middle class, though better educated than the noblesse, were excluded from many departments of the state, and from all high situations: they had little chance of obtaining promotion, confined to the younger sons of the noblesse; and what, perhaps, was more galling to them was, that they found the prejudices of the court, of the government, and of the noblesse, so strong, that they were excluded from all consideration in society, or any weight in the nation.

property or public service. The middle class, thus dissatisfied with the state of things, that is, public opinion in France being in favour of a revolution, and the lower class influenced by the numbers, the property, the information, and the connexions of the middle class, united cordially with them in desiring a change. Public opinion and popular clamour being united, the middle and lower classes became, at once, an overmatch for the king, and that part of the noblesse attached to the court, to which we may add the heads of the church and the army. We say the heads of the church, because it seems questionable whether the inferior clergy in France *, although accustomed and inclined to obedience, were not, at the first breaking out of the revolution, somewhat influenced by public opinion, aug-

* "A part of the deputies of the clergy from Poitou attended this day in the hall of the national assembly, and stated that they attended in order to ascertain the powers vested in the representatives of the other orders, and to produce theirs; so that all being ascertained to be correct and verified, the nation should have real representatives. They concluded by saying, We come, gentlemen, to this assembly, influenced by our regard for our country, to place ourselves so as to act in concert with our brother citizens, &c. &c. It is impossible to describe the sentiments with which this address was received; the hall of the assembly resounded with applause; every one crowded round the curés; tears of joy were shed; they were embraced with enthusiasm. Let us take care, cried several in the assembly, that these worthy curates be not abandoned to the despotism of the bishops. Let us secure these worthy citizens from the animosity and the revenge of the potentates of their order. Let us render their names immortal, and let us record them in our Annales."—*Memoires Historiques de la Revolution de France*, by M. De Bassoille, 8vo. ed. of 1790. Vol. II. p. 7.

mented by the connexion they necessarily held with the middle and lower classes. The same may be said of the subaltern officers and men that composed the army. Under circumstances such as these, it is easy to imagine how decided the public opinion that then existed in France was in favour of a change, of an equality of rights, and of the establishment of a constitution. The middle class, with whom the lower class united, at first were intent on obtaining those rights to which they thought all mankind entitled, and to establish their freedom. At that time, public opinion in France little anticipated the horrors of the revolution, and the cruelties and judicial massacres that subsequently took place, any more than the protracted wars that followed. There is no doubt that public opinion in France felt on the subject much the same as that sentiment in England, and, to a certain point, assisted the revolution. Indeed it would be singular if it had not: no nation that was civilized and possessed of some of the requisites for the formation of public opinion, was likely to tolerate such a system as the one established in that country before the revolution. The civilization and information spreading through the community naturally created the requisites for public opinion, which made the people desirous of establishing a constitution, and security of person and property. The subsequent events that took place, the sanguinary deeds that cast such a stain on the occurrences of that period, when they occurred, completely set at defiance public opinion, and the middle

class of society which became its victims*. For a certain period the lower class set up demagogues of their own, which, supported by the rabble of Paris, and of other large towns, and by the refuse of the nation, not only usurped absolute power, but attempted, by all means they could devise, to destroy public opinion. After the first struggle between the parties had taken place, after the power of the king was abridged and defined, and the privileges and exemptions of the noblesse done away, then it was that public opinion ought to have retained its influence; but when these events had taken place, public opinion, and those persons of talent, information, and property, by which, with the middle class, it was mainly supported, were not found sufficiently numerous, or possessed of that amount of property in the state to enable them, unassisted either by the upper class, the influence of the church and the crown, to make an effectual stand against the lower class, and to control, or even to influence, their proceedings. Many circumstances united, at that time, to cause those who gave power to public opinion to be less able to do so during that period than

* During the height of the revolutionary frenzy, all individuals of information, of character, of talents, and of property, all, in short, that could have supported and given strength to public opinion, were denounced by the revolutionary tribunals—were sent to prison, and conducted to the scaffold, or expelled the country. A war of extermination was denounced against public opinion by the revolutionary leaders. To further their views, they attempted to put out of the way or destroy all men of talent, of information, and of property; all those who could give the lead to or influence public opinion.—*Las Casas' Journal. Conversations de St. Helene.*

might be expected. Not only was there not sufficient property in the middle class, but the religious feeling was wanting in a great degree, and throughout the community there was found a deficiency of moral principle*, that prevented public opinion from having that power and influence which it might otherwise have exercised.

It will appear, as we proceed in the subject, that the revolution in France was brought about, in the first instance, by much the same sentiment of public opinion that was prevalent in England under Charles I. That is, in both countries a middle class arose from the capital created,—an upper class formed by wealth was also made; these, through particular prejudices then in existence, were not permitted to enjoy or to aspire to that consideration to which, from their property, they were entitled. In both cases the revolution was occasioned by the middle class; in both it was successful. In England, the power of the parliament,

* A well-informed writer on the events of those days, observes, "In the French noblesse, habitual dissoluteness of manners continued beyond the pardonable period of life, and was more common amongst them than it is with us: it reigned with less hope of remedy, though possibly with something of less mischief, being covered with more exterior decorum. They countenanced too much the licentious philosophy which has helped to bring on their ruin. There was another error amongst them equally fatal in its consequences. Those of the commons who approached to or exceeded many of the nobility in point of wealth, were not fully admitted to the rank and estimation which wealth, in reason and good policy, ought to bestow in every country. The two kinds of aristocracy were too punctiliously kept asunder; the military, particularly, were too exclusively reserved."

which represented the middle class, was overturned by the army; in France, the same power was first taken from the middle class by the leaders of the lower class, who in turn were driven from power by the army and its leader, Buonaparte. In England, the lower class was somewhat influenced under Charles I. by fanaticism. In France, from the woeful effects of the Catholic system of religious instruction, which only teaches external forms to the population, when the same class no longer attended to their priests, they were left without any moral restraint whatever in their actions, and proceeded to the perpetration of those excesses and murders so much lamented, and so often repeated as to excite disgust in the revolution. At the time of the French Revolution, the mass of the people in France were more civilized and better informed than the population in England under Charles I.; yet when the lower class got the upper hand, the excesses committed were much greater. If the lower class in a protestant country obtained the ascendency, the result could not be such, even if little public opinion or middle class existed, because more moral principle exists, where something more than external forms are taught. If, by any circumstance, public opinion in France had not declared itself, and the revolution had not been effected until fifty years later, then, in all probability, a more extensive middle class would have been formed; and public opinion being more powerful, the lower class could not have obtained the ascendency, nor the outrages have been committed that took place.

The middle class and public opinion in France did not desire the destruction of the king, but were anxious only to limit his power and prerogative, and define its extent. When, after the revolution had advanced, the lower class obtained the ascendency, public opinion had no longer any influence. We must again repeat, as it powerfully proves the necessity of the existence of the requisites for public opinion, that if one circumstance more than another has rendered public opinion in France less powerful than in Great Britain, it has arisen from the moral principle not being quite so strong in the former as in the latter country.

It is a subject of regret, that the ceremonies and doctrines of the Church of Rome should be so mixed by their clergy with religion itself, that it is difficult for many, particularly those of the lower class brought up in that faith, to separate one from the other, to discover the ordinance of man from the precept of the gospel. Those in such a class who think such forms are not requisite, are told by their clergy that they have no religion, and generally end in having none. The consequence of such a result, in Catholic countries, is much to be regretted. It follows that individuals are influenced by the priests, or they throw off religion altogether. There is scarcely any medium; and it sometimes happens that the upper and middle classes, more especially the male part of the population, appear to throw off even all external appearance of religion. This observation is applicable to almost all Catholic countries; it arises from the influence of

the priesthood, which is in every respect to be deprecated*. This proves injurious to the well-being of any state, both in a political and moral point of view; and as the requisites for public opinion extend themselves, may, at some future time, be remedied.

The want of moral principle in the lower class in France during the revolution, occasioned the difference in the proceedings at that time, and those under Charles I., in other respects so similiar†.

At the commencement of the revolution, France ‡ pre-

* Of course this is intended only to apply in a general manner to communities, not to individual cases. There exists sometimes a difficulty in making a general assertion, without appearing illiberal. That such effects have been perceptible in Catholic countries from the influence of the priests is evident to every one.

† There appeared many men in France about that time, (the commencement of the revolution,) of superior judgment and foresight, who, in as open a manner as the times would permit, gave their opinion on the state of things,—an opinion favourable, though in a covert manner, to the revolution; and these opinions of theirs were much followed by the talent and information in France, and adopted, in some measure, as the public opinion of the day. It is much to be regretted that such men as Montesquieu, Delolme, and others, who had drank deep of the love of liberty, should not have foreseen that where religious principle is wanting, public opinion has not full power. They probably mistook, as is so common amongst Catholics, the statements of the priests for religious doctrines, and respect for them for religious feeling.

That public feeling in France wanted this great requisite, is beyond a doubt. What did exist in France of public opinion, certainly supported the doctrines of the revolution, until an unprincipled faction, and the dregs of the people obtained the ascendency, and attempted to put down public opinion by the destruction of those possessed of talent, education, property, or principle; in short, of all those likely to give the tone to public sentiment.

‡ In countries where the people are not of the Roman Catholic

sented the singular anomaly of an upper class, which was the noblesse, not formed exclusively by property, and a middle class possessing greater property in many individual instances than these, who were called roturiers, or nouveaux annoblis, being, as before stated, from the singular folly of the government, placed in a station

faith, and where the clergy have less influence, if any temporary sentiment exists, either against the church, or the clergy, the feeling of religion may not necessarily be lost: the clergy may or may not have influence, but in general the people retain a proper principle of religion. In a Catholic country it is otherwise; if the people have no respect for their clergy or church, or if these lose their influence, it usually follows that the people abandon religious feeling altogether. In France, before the revolution, there was an upper class uneducated, and with little moral principle, though polite and brave, and a lower class poor and ignorant, yet alive to their own interests, and quick of apprehension. When the clergy, who held the people in ignorance and idleness, or, at least who encouraged it, and who influenced the religious feeling of the community were discarded, the mass of the people were left without any religion, scarcely acquainted with anything but the external forms of worship. Much is it to be lamented, that although the Roman Catholic religion may not differ so widely from the protestant as is generally imagined, yet that the Catholic clergy have succeeded so far in mixing up superstitious ceremonies and ordinances with the pure precepts of the gospel, that an individual brought up in that faith often confounds these interpolations with Christianity itself; and when the former appear not necessary, he is apt to think the same of the latter, and by disregarding both, often ends in having no sentiment of religion. This is probably what Lord Bacon means when he asserts that "Superstition is worse than Atheism." That is, where a superstitious feeling exists, if that is corrected, the party is left without any religion whatever. Such seems to have been the case in France during the revolution, and this may, in some measure, account for the atrocities that took place. In general it may be said the French people are averse from cruelty, being certainly as generous and as brave as any other people on the earth.

inferior to that which, from their property, they were entitled, became the most active promoters of the revolution. The case* with us was the same until the revolution; since the reign of Charles I., no privileged class has existed, no difference in the rights of citizens has been allowed in England. There is a house of peers, it is true, but it is selected in general from individuals of property, and therefore represents, in fact, the large proprietors. In France it was otherwise; property, which must always in a civilized country be power, was not considered as sufficient to place its possessors in the upper class, which was filled by a number of individuals, who, being excluded from commerce or manufactures from the prejudices then existing, became, as civilization and capital increased in that country, every day less powerful, whilst the middle classes became more wealthy; and yet the former enjoyed rights and immunities incompatible with the just rights and liberties of the

* When the lower class in France obtained the ascendency, they were, as before stated, left without moral principle; they became the promoters of the massacres which were effected at that time. These men were possessed of the worst qualities of civilized society, without any moral feeling; thus adding to the vices of the civilized, the cruelty and malice of the savage state. This result may generally be expected to take place when power is left in such hands. There is no doubt that much was borne by the French people, and that the oppression exercised by the court and the clergy were great. The following, taken from a publication of the day, shews the intolerance of the church within a century. "Monsieur Derrant, a protestant minister, was hanged at Montpellier, April 20, 1732, for preaching in the wilderness. No pains were spared to make him change his religion, but in vain." The insertion of this article, with no further comment, shews how little surprise such an occurrence occasioned.

latter. It was impossible, under such circumstances, that public opinion should not be in favour of a revolution. An opportunity presented itself to the French, in 1789, of obtaining a constitution, and of avoiding a revolution, by defining the king's prerogative, as was done in England a century before, with the Prince of Orange. At that time Louis XVI., who seems, if one can judge from appearances, really to have desired the welfare of his people, was willing to agree to any plan or any constitution that might be suggested; but the difficulty was to adjust matters between public opinion, that demanded a perfect equality of rights, and the noblesse and followers of the court, who were unwilling to give up what they considered their privileges. Public opinion called in the lower classes to assist them to obtain their freedom, forgetful of the chances attendant on a revolution *. When that took place, public opi-

* "La marche de la civilisation et des lumières affranchit le peuple. Ce nouvel ordre des choses fit prospérer l'industrie et le commerce: la majeure partie des terres, des richesses, et des lumières étoient le partage du peuple dans le 18e siècle. Les nobles cependant étoient encore une classe privilégiée; ils conservoient la haute et la moyenne justice; avoient des droits féodaux sous un grand nombre de dénominations et de formes diverses; jouissant du privilège de ne supporter aucune des charges de la société, de posséder exclusivement les emplois les plus honorables. Tous ces abus excitoient les réclamations des citoyens. La révolution eut pour but principal de détruire tous les privilèges; d'abolir les justices seigneurales, la justice étant un inséparable attribut de l'autorité souveraine; de supprimer les droits féodaux comme un reste de l'ancien esclavage du peuple: de soumettre également tous les citoyens et toutes les propriétés sans distinction aux charges de l'état. Enfin elle proclama l'égalité des droits. Tous les citoyens peuvent parvenir à tous les emplois, selon leurs talens et les chances

nion was not sufficiently powerful to withstand the lower class, and the latter became possessed of the power in the state, until Buonaparte, through his military reputation, the effusion of the army, and his talents, dissolved the republican government which then existed.

In speaking of the state of public sentiment in France, care must be taken not to confound a sort of enthusiasm and love of glory; qualities not uncommon in the people of that country with public opinion, such as it has been defined at the beginning of these observations. The enthusiasm of the French had been raised, in a high degree, by the revolution*; their love of glory was excited by the success of their arms, more especially under the command of Napoleon in Italy: their leader was well skilled in the knowledge of creating such sentiments as might augment that love of glory, more peculiar perhaps to the active, enterprising, and chivalrous spirit of the French, than to any other people in Europe. But these excitements (if they may be so called) on the minds of the people of France, even during the most fortunate days and brilliant successes of Napoleon, could not be said to amount to any thing like public opinion in his favour, unless he had given

de la fortune."—LAS CASES. *Journal de Napoleon*, vol. III., part. vi., p. 104.

* A generous people had been kept under, and found themselves, at once, their own masters: they were not, however, in a condition to secure their liberty at that time, from a want of power in the middle class. Supposing the middle class in France to have been then as powerful as at present, a similar result would not have followed.

to the people what they desired, but which he was not inclined to bestow,—the power of establishing a constitution and a representative government, when the property of the country should have the same influence in the legislature that it has in Great Britain. After Napoleon's reverses, aware of its power, he seems * to have desired to conciliate public opinion.

In the worst period of the French revolution, public opinion was, in some measure, paralyzed, and during the reign of terror was entirely silent. When Buonaparte assumed the consulship, and even before that period, the wars in which the republic was engaged, the various success that attended her arms, and, at length, the conquest of Italy and Egypt by the French, and other matters, seem to have kept the community in such a state, together with the events arising from the revolution, which were not yet out of the memory of the people, that nothing like a sentiment of public opinion seems distinctly to have been pronounced at that period.

The love of the army, and the victories they gained, not only enabled Napoleon to become first consul, but

* Napoleon in the hundred days after his restoration, was desirous to conciliate public opinion, and to gratify the wish that existed in France for a constitution. He called together a meeting in the Champ de Mars for that purpose, allowed the freedom of the press, and gave other indications of his desire to act in accordance to the wishes of the nation. All this, however, had little effect: his critical situation was well known, and his former conduct and sentiments were not forgotten. These acts were, therefore, attributed more to the situation in which he was placed, than to any regard for the wishes or liberties of the people.

gave him the means of becoming emperor, and placed him in a situation to have conciliated the good will of the people, and to have acted according to public opinion, if so inclined *. This he did not attempt to

* Perhaps one of the greatest faults committed by the late Emperor of the French, in the first part of his reign, was his disregard for public opinion. It is impossible to deny that he possessed the greatest talents, both as a politician and a general, and was an extraordinary man. He was also endowed with a most valuable quality in a public man, an unusually quick insight into the human character, and great facility in ascertaining the dispositions and inclinations of mankind. Educated in the camp, and brought up in the midst of the revolution, when enthusiasm and popular clamour were triumphant, he was too much accustomed to influence the people by applying to their feelings or passions. When a particular object, or favourite point, was to be gained, he attempted to excite one or other of these; and seems either to have confounded them with public opinion, or to have imagined that one might prove no bad substitute for the other, as the means of promoting his wishes.

The enthusiasm of the French, raised by the success of their arms, encouraged Napoleon, the favourite of the army, then all-powerful, to assume supreme power. If the extraordinary state of France at that period is considered,—that little moral principle existed, that the demagogues of the lower class might again bring back the horrors of the revolution,—the power obtained by Napoleon was not altogether against the wish of the nation; more especially when his extraordinary success, the aggrandizement of France, his activity, and code of laws, added to his popularity. When, however, his inordinate ambition became manifest, his fondness for war, his wish to aggrandize himself and his family, his arbitrary government, but, more than all, his total neglect of any thing like the establishment of a constitution, were known, there is no doubt that, notwithstanding his success, the love of the army, and the lower class, public opinion was not in his favour. Proud as the people of France might be of their military achievements, and of their greatness, there is no doubt that the formation of a constitution was desired by public opinion in that country.

perform. When too late, he perceived his error on this subject; and, in the hundred days, made some feeble attempts to conciliate public opinion, which were fruitless. He at length became sensible how unreasonable it was, even for one possessed of his gigantic power, to attempt to check mutual communication and general information through the press; in fact, to arrest the progress of civilization. Such an attempt, a century ago, might have been feasible; but for any one to act decidedly in opposition to the direction of public opinion was much the same as to attempt to check the flowing of the sea*.

During the reign of Napoleon, some of the requisites for public opinion were much augmented. Although he was constantly at war, yet activity and inland trade increased in France. The revolution, by causing the subdivision of property, had augmented the middle class; industry, improvement, and the means of acquiring information, were spreading rapidly throughout the community. The middle class was also very much augmented by the change in the law of inheritance, by which the property of the parent was distributed nearly equally (with particular exceptions, at his option, in favour of the eldest) amongst the children. This law,

* The Code Napoleon does him great honour, as well as many of the public works that he undertook, or that he sanctioned, although many of these were undertaken either from vanity or from political motives. One is not, however, at liberty to scan the motives that influence the human breast; all one can do is to judge of the facts, and the results they produce for the welfare of the community.

as far as it has been carried, may have proved of service to the cause of public opinion, by increasing the means of its influence; but it seems questionable how far its continuance will strengthen public opinion, or increase the middle class of society.

Our definition of the middle class must not be lost sight of. Public opinion, in any country, mainly depends on the extent of this class of society, which has the means of obtaining information and extending civilization. If a given quantity of land is sufficient to form a middle class in any nation composed of any given number, if the number of persons is doubled, or quadrupled, on the same quantity of land, the result is, that the whole becomes a lower class instead of a middle one; and it has been already observed more than once, that the state of public opinion and the liberty enjoyed in any country depends much on the relative proportions of the several classes of society with regard to each other—that liberty and public opinion depend, in a great measure, on the extent of the middle class compared to the lower. Now, if the lower class is augmented, and the middle class diminished, that relative proportion is altered in a manner likely to be injurious to liberty and to public opinion. This may be the result of the law of inheritance at present established in France, unless it happens to be corrected by the amount of capital created and added to the general stock, and usually, to the middle class, by the extension of commerce and manufactures in that country; which, considering the activity

of the people, and the natural advantages of France, is not unlikely. But should this not take place, the subdivision of landed property may, at length, be extended so as to destroy the middle class *. The natural con-

* From the Duke of Gaeta's *Memoires sur le Cadastre* 1818, it appears there are 10,414,121 properties in France: now supposing that more than one property may often belong to a proprietor, and making an allowance accordingly, he estimates the number of individual proprietors to be 4,833,000; and as most of these are heads of families, which may, on an average, be taken to consist of five persons, he estimates the total class of proprietors of land to amount to 14,479,830, making nearly half the whole population of France.

The following observation is made by a writer on the state of France:—"The situation of small proprietors in France is scarcely better than that of a common labourer in England, except the spirit of independence that property inspires. It appears, however, that some alteration in the law of succession is absolutely necessary in that country, as a further subdivision of property will, amongst other evils, occasion a chance of scarcity, from the want of power to withhold produce from the market, a want of capital to make improvements in agriculture, and other inconveniences, that will readily suggest themselves.

"In France, the army is more connected with the small landed proprietors than in England; the privates are either the sons or the brothers of landholders, and therefore may be said, in general, to be of a more respectable description than the common soldiers elsewhere. Supposing the law to remain as it affects at present the subdivision of land in France, it is clear that each portion of land will, in time, become so small as to be scarcely capable (population still increasing) to support the family to whom it belongs. Supposing the numbers still to increase, there would at length be a total disability to provide for such an increase; and in the event of an unfavourable year, the community, with few exceptions, being equally poor and similarly circumstanced, would be unable to import corn or provisions; and, as a consequence, want, if not famine, would be felt throughout the country. Not only does such an augmentation of the lower class prove injurious to the wealth and prosperity of the community, but, in a political point of view, it is

sequence may be, the risk of establishing despotism, which is commonly the case where a lower class only exists in the community. The operation of the law of inheritance in France has, to the present time, had a tendency to increase public opinion, by augmenting the middle class; carried beyond a certain point, it may have a contrary effect, by too much reducing this class, by acting as a stimulus on population, and augmenting the lower class, always too great in an agricultural country.

In the event of the lower class becoming too extensive, public opinion would be affected by such a change, and instead of increasing might retrograde in France *.

favourable to the establishment of a military despotism. When such general poverty prevailed as would then be the case, those would be most comfortable who served the state in some situation or other, as soldiers, for example. These, finding themselves better off and more favoured than others of their class not in the army, would naturally look for the continuance of such favours, or for further advancement, to some leader or favourite general, who might have talent and art sufficient to make himself beloved by the army. Others, desirous of partaking similar benefits with the soldiery, would naturally possess similar sentiments. A military leader, supported by such a body of disciplined men, and unawed by an upper or enlightened middle class of society, would, with little opposition and difficulty, become all-powerful, and assume the power of the state on the destruction of public opinion.

* If France continued to remain a purely agricultural country, with little commerce or manufactures, it seems highly probable that her lower class would become too powerful for public opinion; but the spirit of industry spread through the world, and extending itself rapidly in France, makes one entertain sanguine hopes that public opinion will continue to increase in that country. It cannot, however, be concealed, that the upper class in France are not sufficiently numerous, and consequently powerful: at present, the peers,

this is only on the assumption that the middle class was not kept up and increased by the creation of capital, which is unlikely; the probability, on the contrary, seems to be, that France, like England, duly appreciating the advantages of commercial and manufacturing industry, will create a capital sufficient to replenish the upper, and to augment the middle, classes of society. The state of public opinion is more powerful at present in that country, than in any other part of the European continent; and judging of the probable result, from the nature of the people, the advantages they possess in soil, climate, and situation, there seems litttle doubt that public opinion may ultimately overcome all obstacles, and the community obtain all that it desires *. The result of public opinion becoming

and the chamber of deputies, which form the legislature, have not quite sufficient property, nor does it appear how this defect can be remedied, otherwise than by encouraging commercial industry. The upper class in France having little weight from want of property, the king may create peers or orders; but if possessed of no property, their influence in the state is nothing beyond the exertion of their individual talents.

* The interchange of commodities between Great Britain and France is increasing, and is likely to do so, considerably to the advantage of each country, and the increase of public opinion in both.

That mutual intercourse was productive of advantages, has always been allowed, even by the late Mr. Pitt, (in his speech on the Tea Question, in 1785) in parliament. Until the last hundred years, the intercourse between the two nations, so near to each other, and possessed of natural productions making an interchange desirable, was very trifling. A few individuals might cross over the channel, a few vessels with silk or wine might be freighted, but so ignorant were the mass of the people in each country, so little did they know

all-powerful in France as in England, will probably, for the reasons already given, render hostilities between those countries less frequent, and the communication and interchange of commodities much more so. To ascertain with any precision the time when public opinion in France will be as powerful as in England, is not easy; but that such will be the ultimate result, seems, from the daily increase of the requisites for the formation of public opinion, which are extending themselves so rapidly through that kingdom, to be beyond any doubt *.

of each other, that either might imagine, and probably did, that the other consisted of cannibals or savages of the worst description. Three hundred years ago, scarcely any middle class existed in either nation; both were ruled by despotic kings. How easy was it for a government so constituted, having all the power and influence of the state at its command, with a small upper class of society entirely dependant on the court, to persuade an ignorant population in either state, that they ought to enter into a war, that their honour was at stake, that glory was to be acquired, that much was to be gained and little risked by hostilities. Such gave rise to the wars and battles of 1346 and 1456, and on other occasions. The reasons that influenced the governments in exciting the people and promoting a war, arose in a great measure from these causes and others before alluded to, the desire of the rulers to maintain, or extend their power over their people, to raise supplies and suppress discontent.

* France is certainly one of the most civilized states in Europe. What surprise does it not create, in any impartial and unprejudiced person, that, for the last eight hundred years, this kingdom has been more or less engaged in hostilities either intestine or foreign: that an almost innumerable number of actions have been fought by its natives, either in contests with themselves or with other nations, attended by an incalculable waste of life, and treasure without any adequate result. The most natural question that arises is, "*cui bono*" has all this been done? which not being satisfactorily answered, the

There is no necessity for extending our observations on the state of public opinion in France any further. The same results are observable as in Great Britain, the same remarks apply, and the same inferences may be drawn. In France as in England, it appears that, in former times, an ignorant and almost barbarous lower class, an illiterate and warlike upper class, consisting of the feudal barons, together with the church and the crown, possessed the landed property; these, with the lower class, formed the community. In such a state of things, precisely the same results are observable as in this island. The lower class were oppressed by the barons; all parties found their lives

next query that arises is,—what could possibly induce two nations like the French and English, so circumstanced as to be benefited by an interchange of each other's produce and manufactures; so nearly matched, that neither can overthrow the other, or gain much by conquest, to be constantly loading themselves with heavy taxes; to undergo great individual diminution of their domestic comforts; to deprive themselves of the flower of their population; in short, to place themselves in a situation of distress, to suffer all this and even more, for the mere enjoyment of worrying their fellow-creatures, or of destroying their neighbours on an opposite shore, from whom personally they never received the slightest injury? The fact seems to be, that wars in such cases have originated from a total want of public opinion, from the ignorance of the people, who allowed ambitious or unprincipled rulers successfully to employ every engine to influence their passions, and to excite the multitude to acts of destruction towards those of another country, for no possible advantage. In future ages it will, perhaps, scarcely be believed, that rulers could have been so flagitious, or nations so brutalized as to act in this manner. This remark is meant to apply generally, not more to France and England, than to any other country. That this has been the case between France and England, the history of their wars will prove beyond the power of disbelief; that in future, from the present and prospective state of public opimion, such will not be the case, is equally certain.

and property insecure; all supported a king, with absolute power to keep some order, establish laws, and cause them to be obeyed: in consequence, a despotism was established, on the principle that any government is better than none, and that despotism is preferable to anarchy. In process of time, in spite of the opposition and difficulties created by ignorance and prejudice, some appearance of the requisites for the formation of public opinion made their appearance. Some had sufficient penetration to observe the difference between the benign and admirable precepts of Christianity, and the lives and doctrines of the Catholic priests in former days; a proper religious principle sprung up gradually, which is observable in the number of Protestants in France under Charles IX. The civilization and the activity of the people may also be remarked, from the luxury and increase of wealth evident in the reign of Louis XIV.; by degrees these increased, and with them the power of public opinion. Facility of communication, before the reign of Louis XV., does not appear to have advanced in the same proportion: yet the progress of civilization and improvement, though slow, and at times imperceptible, did advance gradually, and things hastened to a catastrophe under Louis XVI., much in the same manner as they did in England under Charles I. Particular events may retard the march of public opinion, and for a while suspend its operation, but the result is inevitable. If the influence of public opinion had not been sufficient in France to bring about a revolution under Louis XVI., it would

have done so in the reign of his successor; or, if circumstances had not retarded its progress, it might have happened under Louis XV*.

Thus we see the same results have arisen, and are now in actual operation in France as we have described in England. We observe a people immersed in ignorance, and with no symptom of public opinion, governed in a despotic manner; we trace the gradual formation of the requisites for public opinion †.

* The advancement of civilization in France was probably retarded by the revocation of the edict of Nantes, and by the long wars waged by Louis XIV. The former of these was an order, repealing a permission granted by Henry IV. to the protestants of France, to exercise their religion, and expelling those who refused to conform to the Church of Rome from France. In those days, there existed little personal property, and still less any means of transporting it by bills of exchange, or credit. The distress occasioned by such an order to the families of the protestants in France can scarcely be imagined at this day. The barbarity and illegality of expelling families from their country for such an offence; and the little effect that this act of despotism produced on the community at the time, sufficiently shows the state of ignorance in which they were, and the influence of the priests over the people. In a political point of view, taking it for granted that Louis XIV. wished to suppress public opinion, and to retain despotism in France, the revocation of the edict of Nantes, the long wars that he waged, and the spirit of conquest and glory that he instilled into his people, were, perhaps, as well adapted to answer the ends in view, as any that could be adopted by a despotic king under similar circumstances: all had a tendency to check the increase of the requisites for public opinion.

† The following, dated December 25th, 1753, shows the state of France as related by an acute observer.—*See* CHESTERFIELD'S *Correspondence*, Vol. IV., p. 41, 8vo. edition. "The affairs of France grow more serious, and, in my opinion, will grow more and more so every day. The king is despised, and has brought about to be hated at the same time, which seldom happens to the same

As these increase, though by imperceptible degrees, in the same proportion does the influence of despotism diminish, although, perhaps, destroyed only by a convulsion of some sort or another. Under whatever point of view the history of France is considered, the same results are apparent. In the two most enlightened and powerful nations of Europe, the all-powerful influence of public opinion is traced, with results nearly similar.

§ 3.

On the State of Public Opinion in Spain and Portugal.

In the consideration of the state of public opinion in the peninsula, we may apply the rules laid down at the beginning of these observations concerning Great

man. He hesitates between the church and the parliament, like the ass in the fable, that starved between two hampers of hay. The people are poor; those who have religion are divided in their notions of it. The clergy never do forgive, much less will they forgive the parliament; the parliament never will forgive them. The army must, without doubt, take different parts in these disputes. Armies, though always the supporters and tools of absolute power, are always the destroyers of it too, by frequently changing the hands in which they think proper to lodge it. This was the case of the pretorian bands, who deposed and murdered the monsters they had raised to oppress mankind. The Janissaries in Turkey, and the regiments of Guards in Russia, do the same now. The French nation reasons freely, which they never did before, upon matters of religion and government; the officers do so too: in short, all the symptoms which I have ever met with in history, previous to great changes and revolutions in government, now exist, and daily increase in France." Such was the state of France, upwards of seventy years ago; but it never occurred to the narrator of these facts, that they were brought about by public opinion; he seems to state the case, without attempting to give any reasons,

Britain and France; that is, to ascertain the extent of information, of proper religious principle, of civilization, facility of communication, and of the middle class of society: in proportion as these are found weak or powerful in the peninsula, in the same proportion will be the weakness or power of public opinion.

Let us in the first place consider the relative strength of the middle class of society, compared with the other classes. Spain, like most countries on the European continent, contained, a few years ago, an upper class, which may be called the nobility, to whom belonged, with the crown and the church, (including in that name the convents, monasteries, and religious foundations of every description), nearly the whole landed property in the country, in former times the only description of property in existence. This upper class, which might have been powerful *, was of late years wholly dependent on the court, and lived chiefly in the capital attendant on the king. The lower class was ignorant, proud, and idle, and dependent in some measure on the church and the upper class; influenced by both, and, in fact, controlled by the former †, not only by the alms and

* The upper class or nobility in Spain, seems to have once been a powerful body; but by the union or assistance that the kings derived from the church, this class was by degrees reduced in power, and became chiefly, if not entirely, dependant on the sovereign, either for situations in the state, church, or army, or for pensions, titles, decorations, or trinkets, bestowed on them by the king.

† It may be asked, of what description of people was constituted the old cortes in Spain, talked of under Charles V. and his suc-

assistance obtained from the religious establishments, but from the influence obtained over the minds of the common people, by the friars and priests spread over the country. In such a state of things, little of a middle class was to be found, and few of the requisites for the formation of public opinion were in existence. In progress of time, by the trade and commercial intercourse carried on through Cadiz to America, and the commerce of a few towns on the Mediterranean belonging to Spain, something like a middle class began in those places to make its appearance *. A small mid-

cessor, which at that period showed some independence. The cortes then consisted of the nobility or upper class, and some few of the middle class arising from moderate landed properties. It must be remembered that Spain, before that period, had been divided into several provinces, or, as the Spaniards called them, kingdoms, such as Castile, Arragon, Leon, Murcia: in these, some industry was formerly exercised, and something like a middle class existed about the time of Ferdinand and Isabella. When, however, America was discovered, and the whole of Spain was reduced to the obedience of one man, the catholic clergy and the king seem to have engrossed the entire power; the middle class became reduced in numbers, and, consequently in power; and the upper class, prevented by the arts of the court, and the prejudices of the times, from engaging in commerce, gradually sunk, as in France, under the entire control of the sovereign. The lower class were not likely to produce capital, or to raise themselves by their industry; they were in general idle, proud, and bigoted, from the peculiar nature of their institutions, not from their disposition: from nature, the Spanish nation are possessed of fine qualities.

* The natural conclusion, when the immense power of Spain in the possession of part of North and South America is considered, would be, that a vast accession of capital might flow into the Peninsula, which would produce an extensive middle class of society. However natural such a supposition, this was not the case to any extent. Many of the Spaniards that went to New Spain

dle class also might arise in Madrid, from whatever small encouragement was given to manufacturers, by the wants of the court, and of the upper class who were congregated there as the residence of the king, and the seat of government. Although Spain possessed colonies of vast extent, which were favoured with a rich soil and happy climate, and produced the precious metals, such was the indolence and want of commercial enterprise, and the ignorance of the people, that in no adequate proportion did the extent of the requisites for public opinion, or the wealth and intelligence of the community keep pace with the means at the disposal of the Spanish people, or with the value and extent of their foreign possessions. In this manner the community in this country seems to have remained, not quite stationary, yet nearly so, for a considerable time. However, taking into account all the advantages enjoyed by the people of that country, it was impossible that

settled there; they did not, as our nabobs from the East, return with their wealth to the mother country. Great part of the bullion or specie that was sent to Spain, found its way to other countries in payment of the merchandise and manufactured articles produced by those countries, either for the consumption of Spain or of her colonies. That part of the bullion or specie, that was appropriated exclusively to the crown of Spain, went nearly in the same manner, and conduced only in an indirect manner to the formation of a middle class. All this wealth was much more instrumental in producing a middle class, either in Great Britain, France, or Germany, or in any country where industry produced commodities coveted and purchased by Spain. From these causes, and the want of the other requisites for public opinion, the extension of the middle class in Spain, by the wealth of the New World, was not so speedy as, considering the advantages, one might be led to expect.

some appearance of the middle class should not at length be perceptible, or that the requisites for public opinion, though weak and indistinct, should not begin to dawn in that country.

The Spanish historians often allude to the Cortes formerly held in various parts of Spain: it might be imagined that such an assembly could not be formed without the assistance of a middle class of society in the kingdom: on investigating the subject, this does not appear. It seems that Spain, in those days, was separated into a number of provinces or kingdoms, some of which were united by Ferdinand and Isabella, and the remainder by subsequent monarchs. These various kingdoms might each have a cortes; but such assemblies were then composed of the barons, or feudal nobles of those days, of the leading prelates of the church; and a few individuals from towns might perhaps attend, but not in sufficient numbers to show that a middle class existed *. What can be gathered from the occur-

* That the middle class was not extensive in Spain, or the cortes independent, will be seen from the following account, by an impartial historian:—

"The cortes of Castile assembled at Toledo, A. D. 1539, refused to assist the king in loans of money. The nobles, in particular, dwelt on the valuable and distinguished privilege of their order, that of being exempted from the payment of any loan or tax. The king, after employing arguments, entreaties, and promises, but without success, in order to overcome their obstinacy, dismissed the assembly with great indignation. From that period neither the nobles nor the prelates have been called to these assemblies; none have been admitted to the cortes but the procurators or representatives of eighteen cities. These, to the number of thirty-six, being

rences of those times in Spain, demonstrates satisfactorily our position in the beginning of these observations,—that the requisites for public opinion must be spread through the community, and a middle class created, to enable the people to secure a liberal form of government. It seems that in Spain attempts were made in former times by a few nobles, and by virtuous or patriotic individuals, to establish something like a constitutional barrier against the prerogative of the crown; but there was no middle class, none of the requisites for public opinion sufficiently powerful, to support such attempts, and they were not attended with success. The state of Spain, in the middle or beginning of the sixteenth century, resembled that of England or France, already noticed at that period. The community consisted of the nobles, who formed exclusively the upper class, of the church and clergy, and of the crown, who between them were in possession of nearly all the landed property in the nation. Few towns or cities were grown into opulence: little trade or manufactures being established, it was impossible for these places to create wealth, or a middle class, which was in consequence scarcely in existence.

The feudal barons, in former times, were as powerful in Spain as in France and England. The same occurrences nearly took place in Spain, as in these two

two from each community, form an assembly, which bears no resemblance to the ancient cortes, but are absolutely at the devotion of the court in all their determinations."—SANDOVAL, *Hist.*, Vol. III. p. 269.

kingdoms *. The church and Catholic clergy united with the king; the barons were curbed, and a despotism was established (preferable, it is probable, to the anarchy and uncertainty of property likely to exist in those feudal times) in the nation, likely to continue until the requisites for public opinion and a middle class of society, from the causes already often stated, rose together into existence. The independence of the feudal barons was thus checked, and the power of the king was firmly established in the nations just mentioned, before the middle of the sixteenth century. Such seems to have been the state of Spain at the time of the discovery of America.

In this manner the state of things in Spain continued. Although a middle class and capital were augmenting in a slow manner in some of the principal towns, the lower class in the interior altered little, from the time of Ferdinand and Isabella. The contest in the peninsula about the succession to the crown †, in which England took a conspicuous part at

* In Spain, as in France or England, the territory now forming each of these kingdoms was formerly divided into provinces, or states, independent of each other. Many existed in Spain; Castile, Leon, Granada, Arragon, Murcia, Cordova, now united, were all independent. These, by various kings, were by degrees united under one monarchy. This was an event beneficial to the people; it caused the petty wars and incursions of one against the other of these small states to cease. These contentions must have been attended with incalculable injury, and have retarded considerably the progress of civilization.

† The war of succession in Spain, that is, whether Charles

the beginning of the last century, did not change the relation between the several classes of society; and in this situation Spain continued, when Napoleon, Emperor of the French, took it into his head to depose the old king, and to set his brother Joseph on the throne of that country*.

or Philip should enjoy the throne, by which the kingdom was overrun with foreign troops, and the people subjected to every sort of exaction, on a question that could not be of the slightest interest to ninety-nine hundredths of the nation, makes it evident that public opinion had then no influence; and that this contest, like that between the partisans of the two Roses in England, those of the Houses of York and Lancaster, was, in fact, the contest between two rival factions of the nobles, in which the lower classes were either obliged or induced to take a part. The only result to the question of public opinion in Spain was that, like other intestine wars, it retarded the progress of civilization, and, consequently, the increase of the requisites for the formation of public opinion. The war itself shews how little public opinion was then in existence.

* Napoleon, it seems probable, imagined that whatever existed of the middle class would be in his favour, on the principle of opposition to the despotism of the court; that the upper class would also be with him; that the lower class were too ignorant to form any opinion; and that his brother, assisted by the bayonets of the French army, would be universally acknowledged. Although this was plausible in theory, yet he ought to have recollected that in proportion as the lower class were ignorant, they were under the influence of their priests, who foresaw the sequestration of the church lands, under King Joseph; besides, Napoleon did not make sufficient allowance for the pride of the Spanish nation, and the assistance that might be afforded by England. He also overlooked one important point,—that the middle class in Spain had, in all the great towns and maritime places, been formed by commerce,—that obedience to Joseph naturally placed them in hostility with England, by which their commerce might be destroyed,—that the motive of interest or advantage, so powerful in the middle class, would op-

In consequence of the attempt of Napoleon, and of the resistance of Spain, encouraged and assisted by Great Britain, the war in the peninsula arose, during which little increase was made to the numbers of the middle class, or to the strength of public opinion. The contest might, perhaps, convince the upper and middle classes of the weakness of their government, to which such implicit obedience had been yielded; it might create a spirit of inquiry, and diffuse information to a certain extent; but, like all contests that interrupt internal or external commerce and communication, and check the industry of the people, it must, in this respect, have retarded the increase of public opinion. It seems that the middle class, together with part of the upper, were desirous (particularly after the French had been driven out of Spain, and provisional juntas had been assembled) to establish something like a constitution: their proceedings at that period indicate such an intention, and show the existing state of public opinion*. When the war in Spain was brought to a

pose them to his brother. Long has the following proverb existed in the maritime towns of Spain, "Con todo il mundo guerra y paz con Inglaterra."

* The Spanish national character may be considered likely some day to produce a fine nation. The pride of character of which the Spaniards are accused, and the high opinion they entertain of themselves, and of their country, are qualities that add force to public opinion, render a population impatient of despotism, and desirous of security of person and property. These qualities may be dormant or concealed, but are natural to the people. It seems that unless a certain degree of information is found in the community,—unless some of the requisites for the formation of public

termination by the reverses of Napoleon, and Ferdinand was restored, some desire to establish a constitution was apparent in the upper and middle classes, where public opinion alone had any influence.

At a subsequent period, when the middle class, sanctioned by whatever public opinion existed, and supported by the army, set up the constitution, and called a cortes, or national assembly of the nation together, such occurrence was not against the wishes of the lower class, who were passive on the occasion, as is evident from the fact that no opposition whatever was made to either of these measures. It may, therefore, be assumed that the constitution established in Spain was not only in accordance with, but was, in fact, established by whatever public opinion existed in the country. Let us, however, consider what was the strength of public opinion, and its consequent influence on the community. We have already stated how the middle class was formed, that it slowly extended itself, and that few towns were to be named in the peninsula, where capital was creating necessary for the formation of this class, and for the requisites for public opinion: the middle class, therefore, when compared to the lower was small. With regard to the upper, it seems doubtful how far it entirely concurred with the middle

opinion are in existence, the above qualities, not brought into action, do not prove of much service. As long as the mass of the people remain ignorant, and under the influence of their priests, there is little probability of the triumph of public opinion.

class, although many of its members undoubtedly did; yet some, possessed of extensive property, were, from early habits, from a desire to preserve their privileges, and from the influence exercised over their minds by the clergy, less zealous in support of the constitution than might otherwise be expected. The lower class were, in general, too ignorant, and too little acquainted with the requisites for public opinion to adopt that sentiment, and were, therefore, much influenced by the clergy, who, from the steps taken by the Cortes*, foresaw the loss of their property and power, were anxious to keep both, and to secure their order. They supported the king in the full exercise of his power as an absolute monarch, more than the constitution†,

* The alienation of the lands of the church was not only contemplated by the Cortes, but actually put in execution. It will be evident that the late Cortes in Spain, which, in a great measure, represented the middle class of society in that country, was, although it went by the same name, an assembly very differently constituted from that to which allusion has been made, as existing in the middle of the sixteenth century. The latter, of course, was, in some degree, possessed of the requisites for the formation of public opinion, which the former, from the age and times, could not command.

† Spain was much in the same situation, when, in 1821, it established a constitution and assembled a Cortes, as England was under Charles I., with regard to the proportion of the middle and upper class to the lower, and to the influence of public opinion. Supposing that England had continued under Charles I., in the Catholic persuasion, the lower class necessarily would have been under the influence of the clergy. Supposing that Charles I., after being overcome by the forces of Parliament, had been supported by a powerful army from France, which, landing on these shores, had

Thus it seems that the middle class of society, the leading organ of public opinion, was not sufficiently powerful in Spain, when compared to the other classes, to establish, unsupported, the constitution against the crown, the clergy, the lower class, and the French army.

We need dwell no longer on the subject of Spain. The same principles that have been applied to Great Britain and France, apply equally to that country. At no period has Spain enjoyed a constitutional government, the short time of the late Cortes only excepted: for this reason, that the means for the support of such a structure are not as yet sufficiently powerful. One may feel pretty certain that a desire to establish liberty and security of person and property, was felt by the upper classes, even in the remote times of Ferdinand and

been assisted by the lower class, under the influence of the clergy, and, for a time, setting aside public opinion, had established the king in the plenitude of his power. Now, in such a case, although Charles might have been joined by some of the upper class, and many of the lower, it does not follow that he would have been supported by any other sentiment in the country than popular clamour. Public opinion might have been kept under and lain dormant, but not extinguished. Such seems, in some measure, to be the state of that sentiment in Spain, and the conduct of part of the upper and the lower class which supported the absolute power of Ferdinand, and the destruction of the constitution when the French army entered Cadiz. When there is a sort of equality between public opinion on the one side, and the prejudices of the people (the lower class) on the other, a foreign force can turn the scale, by giving the executive power to whom it pleases, as was the case in Spain at this time.

Isabella, about which period the discovery of America took place; this desire, found in all climates and countries where any information exists, might, of course, be felt by the few individuals who assembled in the Cortes in the same manner as the parliaments in former times in England; but in both cases, the wishes of a few, their virtue and disinterestedness, or whatever qualities they might possess, could not effect a change, or establish liberty where the people were in perfect ignorance, and wanting in almost every requisite for the formation of public opinion. Of late years, however, the requisites for the formation of public opinion have augmented considerably in Spain, as the late events of the establishment of a constitution and Cortes prove beyond doubt. In the events that occurred, it is observable that part of the upper and the middle class have always been in favour of the constitution; that the middle class in all commercial or manufacturing towns, has been, and continues to be, of the same way of thinking. Precisely the same results have taken place in Spain as occurred formerly in Great Britain, and thirty years ago in France, and what may, in all probability, take place in all communities where public opinion is increasing; a strong desire for the establishment of civil liberty and a constitution. Although the upper and the middle classes have, of late years, improved in Spain, and obtained some of the requisites for the formation of public opinion, yet they are not sufficiently numerous, and, consequently, powerful, when compared to the

lower class, supported by the church and its influence, by property, and by habit on the minds of that class, assisted by the power of the crown, and a powerful foreign force that can be augmented at pleasure. There can be no doubt that public opinion in Spain has been matured and formed by the middle classes created by the capital. Although the activity of the Spaniards of the present day is not great, although the catholic priests have a great influence over the minds of the mass of the nation, which will, in all probability, be exercised to keep them in their former state; yet the nation naturally possesses good feeling, quickness of perception, pride, and a spirit of independence, qualities that render them likely to attain the requisites of public opinion, which sentiment there can be no doubt will increase in power, in proportion as the middle class, as civilization and its advantages, already so often dwelt on, extend through the community. If public opinion was so strong or so nearly balanced as to require, in 1823, a foreign force to put it down, it seems probable, judging from analogy, from what has occurred and is daily taking place amongst other nations, that it may gradually gain strength, and become in time as powerful in that fine country, as every friend of civilization, of humanity, and of the happiness of mankind could desire.

On the State of Public Opinion in Portugal.

We repeat the same remarks already applied to Great Britain, France, and Spain, also to Portugal. These will enable us to judge how far public opinion may have influence in that country. The power for the creation of capital, and, consequently, the requisites for the formation of public opinion, might exist in this country to some extent, from the following causes.—The situation of Portugal is one advantageous to facility of communication; its great length of sea-coast, the rivers by which it is intersected, the harbours of Lisbon, of Oporto, together with the small extent of inland territory, seems to render it well adapted to be a commercial state. In former times the Portuguese were active, and extended their commercial intercourse to many parts of the world. The natural productions of the country are also valuable, and afford them an opportunity of an interchange of commodities, producing a profitable trade with those countries in want of such productions. From these causes it may be natural to conclude that a considerable upper and middle class of society, when compared to the lower, ought to exist in Portugal, which country having a smaller agricultural population than Spain, and, consequently, a lower class less numerous in proportion to the commercial part, might be supposed easily influenced by public opinion. This sentiment now, it is probable, may begin to show itself, having been only a few years in existence.

The influence of public opinion in Portugal has manifested itself chiefly, as was naturally to be expected, in those places where a middle class had been formed from the causes already so often mentioned. On referring to the history of Portugal, one is told that, in former days, revolutions were effected by the united wishes of the people, such as the successful resistance against the dominion of Spain, when, in the year 1640, the Portuguese deposed the Spanish Viceroy, and chose John of Braganza as their king. There is no doubt, the dislike of the Spanish yoke was general throughout the country, and that the people united cordially and unanimously to effect its overthrow; yet such a feeling was more hatred to a foreign yoke than public opinion, as we have already defined it. At that time, few, if any, of the requisites for its formation were in existence in Portugal; there was little moral principle, information, or facility of communication in the community: public opinion could, therefore, scarcely be found. The revolution alluded to in 1640, seems to have been this:—a foreign yoke detested by the Portuguese is imposed on them,—the upper classes form a conspiracy for its overthrow,—they put it into execution, and find themselves strongly supported by the popular clamour of the people, and by every man in the nation *. The Spa-

* The influence of public opinion in Portugal, as in other countries, is most powerful where a middle class and capital have been created, and the requisites for public opinion have increased; such as in Oporto and Lisbon, which contain the requisites for public opinion more than any other place in the kingdom.

niards, at that time, otherwise occupied, make but feeble attempts to recover the dominion of the country; and the people of Portugal, united together by hatred of the Spaniards, by the common danger, and by apprehension of their oppressors and the cruelty of their government, make an effectual resistance, much assisted by the natural defences of the country and the difficulties attendant on an invasion of Portugal. These circumstances combine to enable the Portuguese to make an effectual opposition to Spain, but the same resistance would be made by people, under any circumstances, unaided by public opinion *.

To enter into further details on the events that have occurred in Portugal, is unnecessary. What length of time may elapse before the requisites for the formation of public opinion are sufficiently powerful to establish a constitution, and to secure liberty on a firm foundation, seems no easy matter to determine. That such at some time or other will be the case is not doubtful; the accomplishment of so desirable an event de-

* It is difficult for one not residing in a country, and dependant, therefore, on the reports of others, to determine with any accuracy the relative proportion of the several classes of society. There seems no doubt, that information, and facility of communication, two of the requisites for the formation of public opinion, are rapidly extending in Portugal. The papers established and spreading themselves in every direction, as well as the other publications from the press; the establishment of steam-boats, now going at stated times; the improvements in the roads that are made, and are likely to be increased, all tend to show that these requisites are extending in that country.

pends on the extent of religious principle, information, facility of communication, and on the degree of national activity to create such requisites, that may be in the country. In all probability, these requisites are sufficiently strong in the large and commercial towns of that country to establish a constitution; but it appears doubtful, whether the population of the interior, encouraged by the clergy, may not prove too powerful for some time to come for the middle class, and part of the upper that may desire a change, and seek to establish a constitution. As we are not acquainted with the relative proportion of the several classes, and the extent of the requisites for the formation of public opinion, it seems almost impossible to form a decided opinion. The rule being laid down, the application of it must be made by those who have the means and opportunity of forming a correct opinion.

From the recent events in Portugal, as well as in Spain, our observations on the middle class and civilization appear in every respect confirmed.

§ 4.

On the State of Public Opinion in Italy.

The country included under this name, extends from the southern part of Sicily on one side, to the Alps on the other, with a considerable line of sea-coast on either side, divided into several states, not only different in soil and climate, but in the manners and dispositions

of the inhabitants, who seem for a considerable time to have been separated, and not to entertain for each other sentiments likely to render a close union at present a probable occurrence.*

It may not be necessary to particularize each community, or to discuss in all the state of public opinion; it will be sufficient to consider only some of the most populous and extensive, such as the north of Italy, the states of the Pontiff, and the kingdom of Naples.

The north of Italy seems to possess a favourable climate and soil, with good harbours, and every advantage that could be desired for quick interchange of commodities, for the encouragement of commerce, and manufactures. Although the Milanese, Piedmont, Genoa, and Venice, are separated by political events, yet they are so situated, that it seems probable, should public opinion ever have sufficient power, they may become one extensive state. As we are not entering into political reflections on this country, but merely considering the progress made by public opinion, we will only say, that the same rule will, in all probability, apply also, with little variation to these states; however, we will refer to each in the order in which they are named. The Milanese, although not possessed of the advantage of sea-coast, has a fertile soil, and a climate favourable

* The nearer they are to each other, the greater seems to be the jealousy, even at this day, entertained. The natives of particular states seem to imbibe with their mother's milk feelings of dislike, contempt, or apprehension, against those that are in their neighbourhood. In all probability, however, as information spreads, this petty jealousy will wear away.

to production, with an active and intelligent population. The facility of communication, arising from the goodness of the roads, and the lakes interspersed through it, is considerable: this country for some time, it is probable, has been possessed of wealth, and, consequently, of a middle class of society. From these circumstances it seems likely, that the requisites for public opinion exist in the Milanese, and may extend themselves in the course of time, more powerfully than appears probable from any indications that have yet appeared.

The same observation, with little variation, may be applied to Piedmont, although not so rich a country, or possessed of the same advantages as the Milanese.

In former days, Genoa was conspicuous amongst the maritime republics of the Mediterranean, created wealth, and become civilized in a considerable degree. This appears evident from the naval armaments fitted out and kept up, by the exertions in the wars against the Turks, the splendid edifices which abound in Genoa and its neighbourhood, and more than all by the liberal form of government which the republic formerly enjoyed, at a time when the greatest part of Europe was in ignorance, and enslaved by the feudal system, or by other causes. At that time, Genoa seems to have been in possession of an extensive middle class, of a liberal form of government, and of some advantages of civilization, which it was impossible she could obtain over her contemporaries, if she had not enjoyed a sort of monopoly of the commerce, and of some of the manu-

factures that existed in those rude ages. Although probably, the requisites for public opinion were not in full growth, yet she seems to have created much wealth; she had facility of communication by sea, sufficient to have spread information and commercial activity through her population, which though not what it may be found in the present day in some communities, were yet much superior to the rest of the populations of Europe in those days *. The same remark, in every respect, seems applicable to Leghorn, and still more so to Venice, which in most of the advantages of trade or commerce resembled Genoa.

The state of Venice resembled that of Genoa. Each republic was favourably situated for commerce with the Levant, and every other part of the Mediterranean. In former times, before the trade of the Indies by sea was known, and before navigation was brought to the degree of perfection to which of late years it has attained in Europe, Venice and Genoa seem to have

* The wealth observable in the buildings at Genoa, and the other parts of the sea-coast in its vicinity, shows what an amount of capital must have been obtained by commerce in that republic formerly, and the extensive middle class that was thereby created. It is probable that much of this commercial activity and enterprise may have been checked by that of other nations in the present day, which took away the monopoly as formerly in their hands. Yet a certain commerce must yet remain where the activity in the people continues; and more particularly when one considers the favourable situation of these sea-ports on the Mediterranean, and the extent of commercial intercourse that may, in process of time, be carried on between Italy and those countries on the opposite shores of the Mediterranean, when civilization extends itself in that part of the African continent.

been the chief places through which an interchange of commodities between Europe and Turkey, and Egypt, and India, or, in fact, between Europe and the two quarters of the globe in this hemisphere was transacted. In these republics, therefore, a degree of capital was created superior to what could be obtained in many other parts of Europe; the result was, that some of the requisites for public opinion, to a certain amount, were extended through the community, and a liberal sort of government originated in consequence *. Although the upper and middle classes in Venice were more considerable, when compared to the lower class, than in most other nations of Europe at that time, yet public opinion had not the influence in proportion to the entire population that exists at present in Great Britain †. The

* It is not intended to convey the idea, that the strength of public opinion in Genoa, or Venice, formerly was equal in any respect to what at present it is in Great Britain, but merely to show the effect of the requisites of public opinion being in existence in a community, and a middle class thereby extended.

† The means, formerly, of diffusing information were not what they are at present in England, and, consequently, the improvement of the middle class in those small republics, and also of the first part of the lower class, must have been much slower. In towns like Venice or Genoa, where the population and the entire state was included within a district of a few miles in circumference, it was perhaps not difficult to afford facility of communication, which tended to spread the requisites for public opinion. So far, these might extend; but the case was different when it applied to the people in the interior of the country. The ignorance of the people is to be accounted for by the difficulty of communication, which kept away the requisites for public opinion. Thus, whilst some of the towns on the sea-coast obtained wealth by commerce, and a sort of freedom, and a middle class, the people at no great distance in the

power of public opinion, therefore, in Venice, was not so gradual in extent, though sufficiently powerful, as to confirm what has been advanced concerning the requisites for the formation of this sentiment. Nearly the same remarks, made with regard to Genoa, will apply to Venice, with little difference. These republics owed their commercial prosperity in a great measure to their situation, that afforded facility of communication, and also, to the want of activity and ignorance of the people in other parts of Europe. The degree of liberty enjoyed by these petty states, the civilization and extent of the middle class, and the diffusion of the requisites for the formation of public opinion to a certain extent through the communities of each, at a time when nearly the whole of Europe was emerging from the ignorance of the middle ages, affords an excellent example of the position we endeavour to prove, that a liberal form of government depends on the power of public opinion. When we come to the Hanse Towns, this will be more fully exemplified. These republics have, in a great measure, lost their means of acquiring wealth, and of extending their commerce and their power, (which was great, in proportion to their extent and population, when compared to other states,) in consequence of the commercial and manufacturing industry that has arisen in other nations, who, when exer-

interior, were in a state little removed from barbarism. This applies not merely to Venice and Genoa, but to the Hanse Towns at the latter end of the sixteenth and beginning of the seventeenth century.

cising the same activity, and possessed of greater advantages in population and extent of territory, became their rivals in the trade of the Mediterranean, and were able to supply manufactured articles at a lower rate; besides the facility of communication with India by sea, as navigation acquired greater perfection.

The states of the Pope are probably not so much advanced in the possession of the requisites for public opinion, as the North of Italy. The chief property in the Roman states, seems that held by the church and by an upper class, which class, with the ecclesiastics and the lower class, form the community. The ecclesiastics can scarcely be looked on as part of the upper or middle class *; they are a distinct order in the state; with little income, except from the church, with no power of transmitting it to their family: no attempts are made by them to improve their situation by that activity so prevalent with the middle class in other nations. Little commercial or manufacturing industry exists, and, consequently, in this state, only a small increase takes place in the middle class, or the requisites for public opinion. Some time may elapse before a powerful middle class will be formed in Rome, to give power to public opinion. The Roman people, however, have naturally great activity, and quickness

* It seems that all bodies of men not classed from their property, but from all other circumstances, acquire amongst themselves a sort of corporation spirit which in general is at variance with public opinion. This may in some measure account why the states of the church in Italy are more deficient in this sentiment than the other parts of that country.

in discerning what is to their advantage; the time may come when they will be sensible of the advantages of a liberal government, which, however, cannot be obtained; and if obtained, cannot exist, with any probability of continuance, unless laid on the firm foundation of public opinion.

There is no necessity to return to former times, to go back to ancient Rome for proofs that the inhabitants of this part of Italy are capable of great activity, possess the desire of improving their condition, and have the latent qualities in them necessary for the formation of public opinion: when these will make their appearance, firmly to establish that sentiment in the state, seems uncertain.

Naples and Sicily.

Much the same that has been said of the other parts of Italy, will apply with little variation to Naples and Sicily. The South of Italy enjoys some advantages beyond the Northern part, amongst which greater security from invasion is not the least: however, this may be counterbalanced by others in the Northern part, which place them nearly on an equal footing. In Naples there seems every facility afforded, as far as natural advantages may be taken into the account *, for the

* The South of Italy has a warmer temperature than the North: whether this checks that industry so requisite in a community to create capital, is more than we can determine. In our opinion climate has little or nothing to do with the energy or activity of a nation, as will be observed in the concluding chapter. However, Montesquieu, and other writers seem to have entertained a different sentiment.

formation of the requisites for public opinion;—a happy climate, fertile soil, good harbours, an active population, which ought to produce an extensive middle class of society. There is, however, a degree of idleness* in the people, generated if not encouraged by many circumstances, most injurious to the increase of wealth and to the spread of civilization, and to the other requisites of public opinion. Sicily, like Naples, has many advantages of situation and climate, and ought, as well as the rest of Italy, to stand foremost in the possession of the requisites for public opinion.

There is considerable difficulty in ascertaining correctly the state of public opinion in Italy. That some of its requisites, civilization and facility of communication, have of late years much increased, is evident; it is also certain that the middle class of society has much extended. Information also, and we will hope moral principle are more general than formerly; the influence, therefore, of public opinion must necessarily augment. It has been remarked, that although the states of which Italy is composed speak the same language, and assimilate in religion and manners, yet they are swayed by a spirit of rivalship and petty jealousy, encouraged by their former rulers, interested in their divisions, supported also by the old prejudice and recollections of

* This idleness does not arise so much from the climate as the ignorance in which the people for such a number of years have existed. Although the air, and other causes may have a tendency to render the people more sprightly, and their vivacity greater, it does not seem to follow that they are less susceptible of the desire, common to individuals, of improving their situation, the main cause of industry and commercial activity, which is as likely to exist in Italy as elsewhere.

former times, that exist amongst them: how long this state of things will continue is difficult to determine *. All that can be said is, that the requisites for public opinion are increasing, and will continue to do so, as in many parts of Europe, but in what ratio is not so easy to determine. There is no need to extend our observations further, than to regret that, for such a series of years, this portion of Europe, blessed with so fine a climate, so productive a soil, and an intelligent and active population, should remain subject either to foreign dominion, or to the influence of the priesthood, so as to check the progress of public opinion. The union of sentiment, so requisite to the power of public opinion, is lessened by jealousy and want of co-operation in the Italian states; and whatever public opinion is in existence, instead of flowing in one great and powerful stream which could not be resisted, is divided into separate channels, each inclining in the same direction, yet deficient in that strength and majestic appearance, so necessary to any cause advocated by a great community.

It is observable that when in a nation the people are divided into an upper class, and an extensive lower

* Whenever public opinion becomes sufficiently powerful in Italy, and there is found sufficient patriotism and virtue in the people, it seems likely that some sort of federal government may be established for the North and for the South, by which they may be emancipated from a foreign yoke, and secure to each other the blessings of freedom, and of whatever institution, in each separate state, the inclination of public opinion and the interests of the community will deem most advantageous.

one, factions and parties spring up amongst the enterprising leaders of the former class, which engage the lower class on one side or the other, and often endanger the security of the state. This has been the case in Italy. The Guelphs and Ghibelines contending together, had much resemblance to the wars of the Roses in England, the factions of the League, and Guises in France, which were events common in those nations where no public opinion or middle class of society was to be found, and where an upper class, without information or principle, engrossed all the power and property in the country. One proof that public opinion in Europe has much increased, seems to be the entire change which has taken place; no such factions are at present to be found in any part of the continent.

Italy has suffered, and has been retarded in its progress to civilization, by these causes, which made property insecure, and kept back the industry of the people, and the extension of the requisites for public opinion.

§ 5.

On the State of Public Opinion in Germany.

Germany, like Italy, is divided into several separate states, which it is not necessary to particularize further than by alluding to those that are Protestant, and those that are of the Catholic persuasion. In Germany, the reformation, under Luther, first made its appearance. From this circumstance, it seems certain that some

of the requisites for public opinion must, at this time, have been prevalent in that country *, when it is considered that the church of Rome was, about this period, in the zenith of its power, when nearly the whole of Europe was under the influence of the Pope, when its population was idle and ignorant, excepting perhaps some of those places where the doctrines of Luther and others were adopted by the community. In the preliminary observations it has been said, that information and the prevalence of public opinion both encouraged the reformed religion, and were, in turn, supppрted by it; as a consequence, there must have

* The reformation was preached and supported by Luther and Melancthon in the beginning of the sixteenth century in Germany, but it was occasioned by the improved state of the people, and the information spread through those communities where it was made known. As well might Cromwell be said to have brought about the opposition of parliament to Charles I. in England: Cromwell took advantage of the feeling of the army and of the discontents in the nation; in the same manner Luther preached the reformation which was adopted, because the people who heard him were not so bigoted, or so ignorant, as not to perceive that the church of Rome contained abuses which ought to be remedied, and the reformation was the consequence, which spread rapidly, and was adopted in other countries similarly situated. The same may be said of Calvin at Geneva and elsewhere. Suppose that Luther had been born two hundred years before, it seems more than probable that he would have made few proselytes, because the ignorance of the people, and, consequently, the influence of the Church of Rome, would have been too great. The Church of Rome, therefore, is only dangerous when the people are ignorant, and there is a small middle class; when an extensive one is in existence, and public opinion powerful, all apprehension of the influence of the pope, in political matters, is out of the question; every community furnishes instances of the truth of the assertion.

existed; in the beginning of the sixteenth century, some influence of public opinion in parts of Germany. It does not, however, appear that the requisites for its formation have proportionably increased: there might exist a want of facility of communication, which occasioned this in Germany as well as in other parts of Europe. To ascertain the extent of public opinion in the days of Luther and Melancthon seems difficult; that such did exist to a certain extent, is evident from the result, but there are few data on which to form the judgment, except the fact just stated. Generally speaking, a country like Germany, placed nearly in the centre of Europe, with few means of maritime intercourse, is not likely to be amongst the first to extend the requisites for public opinion; not only from want of communication, but also from the deficiency of capital, not having the same facilities for creating it by commerce as those more advantageously placed. It seems, however, that natural advantages weigh little in the scale, if the industry and activity of a people is great. There is no doubt that in many parts of Germany the people in general possess the latter qualities, and that the desire to improve their condition, implanted in the human mind, is as powerful in this as in most other nations *: the consequence is, there is a middle

* Supposing two communities equally active and industrious, and possessing equally the advantages for foreign and domestic trade, and equal in every respect, excepting fertility of soil and climate; it seems probable that, under equally favourable circumstances, the one possessed of the latter advantages would realize capital and a middle class sooner than the other. Such a parallel be-

class which, from the manufacturing activity and industry of the people, extends itself and the requisites for public opinion.

Some of the German principalities may not be included in this observation, and to others it may apply in a greater or less degree: the improvement may be more evident since the late peace on the continent, and the opening of Spanish America has given an impulse to trade in Germany, and created a demand for manufactures little known before. Thus it turns out that the American continent in civilizing itself, and demanding the produce and manufactures of other nations, civilizes and enriches them also. Germany may feel the want of facility of communication *, to extend its manufactures, yet its own consumption must be considerable; and if the activity displayed by its inhabitants is properly directed, of which there is little doubt, the requisites for public opinion will increase, as they have

tween two nations can scarcely ever be drawn, and is rarely made to explain the subject. It has occurred, and seems exemplified in the present case, that the advantages of soil or climate are not equal to those of local situation, which last are also inferior to the activity and commercial enterprise in a nation. There is no comparison between the soil and climate, and even situation for commerce, of Scotland and Portugal; yet the activity and industry being greater in Scotland, civilization, capital, and all the requisites for public opinion have augmented more in that country than in Portugal.

* The rapidity of some of the rivers in Germany prevented facility of communication in some measure, until the improvement in machinery enabled the steam-boats to be applied to their navigation, by which means the current takes the commodities to the sea, and the power of machinery brings back whatever is obtained in exchange.

already done in a considerable manner. The same remarks apply to Prussia.

Public opinion is increasing in that kingdom. The wishes of the people for a representative government have indicated themselves in a manner not to be mistaken. From their entertaining these sentiments, sufficient information, it seems, exists in the community to desire a liberal form of government; and when this expression of sentiment is once pronounced, public opinion has influence. Such a sentiment, in general, does not emanate at first from the upper class in despotic countries; that class is too small, and too much under the observation of the crown, to determine on such measures, unless highly civilized and possessed of great property. In the middle class the case is different; they cannot well be influenced, they are aware of their numbers and power, and when once resolved on a liberal government, whatever may be the existing form, the change, if desired by public opinion, may almost be considered as effected.

The Hanse Towns will be mentioned in their order, and Dantzic, as one of them, will be comprehended; yet as its situation includes it in these observations, we may be allowed to remark that this place exemplifies in a strong manner the position laid down,—that, in a civilized community, the government depends on public opinion. We find the inhabitants of this place, by their activity and commerce, rising into importance. At an early period, when Prussia and Russia were in ignorance and slavery, the Dantzickers enjoyed a free

sort of government, formed by public opinion, by an extensive middle class, and a trade that extended over the Baltic, and the adjoining parts of the continent. This community was, perhaps, too small, and too much exposed to the attacks of the powerful and rude people by which it was surrounded, to remain always independent: yet it seems to have continued so for a considerable time; and, probably, it received more injury, like Venice and Genoa, from the increasing trade of other nations, than from the arms of its neighbours. That its population was more civilized, in those times, compared to the rest of Europe, and that its government was free, seems beyond doubt. It is evident this could only arise from the increase of the middle class, from the creation of capital, and the extension of the requisites for public opinion, which improved the people and made them desirous to obtain a liberal form of government, and security of person and property*.

* "In those days the Dantzickers opposed themselves (A. D. 1637,) to the impost laid upon the merchandise that passed to the new town of Ulaslavia, by Casimir of Poland. They obtained from him great privileges, the remission of tribute, and the guard of the sea. This love of liberty made them declare for the protestant religion, and for Maximilian against Stephen Bathori, who thereupon proscribed and afterwards besieged them; but they recovered their liberty and religion. They obtained the right to coin their money, administer justice, and make one of the members of the state; and were admitted, in 1632, to have suffrages in electing the king."—CLUVIER, *Hennenberger Descr. Boruss.*

The remaining details of this town, its power, wealth, and consequence, its sending out armed ships, &c. &c., will come under the consideration of the Hanse Towns.

More than once it has been necessary to observe that formerly, in almost every part of Europe, the barons or upper class, the crown, and the church, absorbed all the property and power in the state. The aristocracy and the church supported the crown, by whom, in their turn, they were cherished; the lower class was ignorant and idle, and no middle class was in existence. The same observations will apply to Russia, with the exception that the Greek, not the Roman Catholic Church, was the established one of that country. Nearly the same results will appear to arise from the progress of civilization*, and the power of public opi-

* The following account, written about an hundred years ago, of the state of Russia, will show its condition at that time. "The Czar almost gives laws to his people, and fixes taxes as he pleases. He has other revenues for himself in particular, and takes possession of all the estates and goods of those that die without issue; and if there be any rich persons incapable of serving him in war, or elsewhere, he takes part of their possessions for himself, or for some officer. And the Czar's power is so great, that he is master of the lives and fortunes of his subjects, who *acknowledge themselves his slaves*. His power is maintained by making it death to all Moscovites to travel without the prince's leave; *the next is the ignorance of the people*. When a debtor is unwilling to pay, or to give security, he becomes slave to the Czar, or to some other, if the prince pleases. It is a very hard matter to know the Czar's titles; and the pretence of war he made against the Polanders, in 1645, was, that they had not given him the titles due to him. One of his predecessors caused an Italian ambassador's hat to be nailed to his head, because he kept it on before him. Their leagues are cer-

nion in Russia, as in other parts of Europe*. The upper class, possessed of nearly all the landed property in the country, may in time be induced, by the luxuries and enjoyments of the capital, and the desire of possessing articles of manufacture conducive to their enjoyments, to follow the examples of the same persons in England and other countries in former days, to give up idle retainers, the magnificence of feudal hospitality, and to dissipate their revenues and estates either in the capital of their country, or those of foreign states; and by these and similar means, tend to alienate their property, and lessen their class, and increase the middle one, much in the same manner, and producing the same results, that took place in England under Henry VII. and succeeding reigns, which, with other causes, deprived the feudal barons of their extensive landed property, of their influence in the state, and prepared the way for the rise and increase of the middle class. In other respects, the same remarks made with regard to the rise of public opinion in England, by the creation of capital,—by the increase in the numbers of the middle class, from commercial and manufacturing industry,—and the same consequences, the rise and progress of the requisites for

tain spaces called versts. If they learn to read and write, it is enough to make a doctor of them."—COLLIER'S *Historical Account of Muscovy*, folio, Newborough, London, 1701.

* Probably the Greek church, being more under the influence of the nation, not subservient to the Pope, but the crown, would be more in unison with the progress of public sentiment, than in those countries where the Catholic religion is the national one. Where the clergy receive their instructions from the Pope, they are more likely to be kept apart from the feelings of the community.

the formation of public opinion,—will apply to Russia, which, from being possessed of an immense territory, entertaining no apprehension of foreign invasion, with an active and enterprising population, every year increasing, must, from the nature of things, tend to the creation of capital, and the extension of public opinion. Whether the results arising from this change will manifest themselves in any open and sudden manner, or that the form of government will gradually become more enlightened and liberal, as the requisites for public opinion augment, and produce their natural results, cannot be determined; but that an amelioration will follow, seems, judging from analogy, certain. It is evident that the upper class are improving in education, and every sort of knowledge; that a middle class is rising into existence; that facility of communication is extending: the roads, the trade of Russia, the improvement in the moral principle and education of the people, all show this to be the case *.

* Let us suppose, which is improbable, that any government was anxious to check the spirit of commerce, and that desire of improving his situation so common to mankind, and that steps were taken to prevent foreign or domestic communication, and the other requisites for the formation of public opinion; that alienation of property in the upper class was checked, and they were unable to sell their estates; it may be said that, even in such a case, it would be almost impossible to check the spirit of improvement, and the middle class. Even despotic governments are fond of obtaining money,—are sensible, in the present day, that it is the chief source of their power; they will, therefore, encourage all those who, by their activity, add to the wealth of the state. In this respect the "auri sacra fames" gets the better of political consideration, or of future security for despotic power.

It seems, therefore, that in Russia as well as every other part of Europe which has been considered, the government was, or is at present, despotic, in proportion as the population is inactive, ignorant, immoral, and poor; that there exists, in such a case, only an upper and an extensive lower class. That in proportion as capital is created by the causes already enumerated, the requisites for public opinion augment, a middle class rises up, public opinion becomes powerful, and despotism, with ignorance, recedes, and liberal institutions are established. Russia affords a strong instance of this; a century ago her state may be remarked from the extract before given: that she is gradually improving, needs no further proof; that the results will be the same as in other countries seems equally certain. In so vast an empire as the one under consideration, some time must elapse for the purpose of civilizing the people. Facility of communication does not exist in the interior of this country, where water communication to any extent is not found, which assists so much the facility of intercourse: it follows, that roads must be improved; and even where this is the case, the expense attending the facility of communication in so extensive a country, checks much the activity and intelligence of the people. In this remark, allusion is made only to the interior of Russia; in the large towns on the sea coast, in every place where facility of communication can be obtained, there is little doubt that the other requisites for public opinion will also become prevalent, a middle class arise,

and the general results already alluded to eventually take place.

We will not particularize the other nations of Europe, more than is necessary for proving the influence of public opinion over the form of government in a civilized community. With regard to the others not mentioned, it may be sufficient to state, that the same remarks already applied to Great Britain, France, and the other countries in which public opinion has been considered, will apply in the same manner to them. In concluding the observations on the state of Europe, it may not be improper, for a further illustration of the subject, to refer to the History of Holland, of the Hanse Towns, of Switzerland, and of Turkey, on which a few remarks only will be made, before we proceed to consider other parts of the world.

§ 7.

On Public Opinion in other Parts of Europe.

The spirit of activity and commercial enterprise first gave sufficient information and power to the inhabitants of the United Provinces to throw off the yoke of Spain, by the assistance of England, and the connivance of other powers. When this was effected, the Dutch grew rapidly into importance, and became, for their population and extent, the most powerful nation in Europe*. In the exact proportion that their

* This was much augmented by the carrying trade of Europe, which the Dutch enjoyed almost to a monopoly, until the Naviga-

commerce and their capital increased, so did their middle class and the influence of public opinion; their form of government became liberal, and security of person and property was established. It is not necessary to enter into a detailed history of this country, or to enumerate its colonies and possessions in the East Indies, which it gained from the Portuguese, or the details of its contests with other nations. Our desire is only to exemplify the fact of the influence of public opinion, and to show how far its requisites depend on the industry and moral principle, and other causes so often mentioned *. That the United Provinces were possessed of great wealth, and had an extensive middle class, that the requisites for public opinion were diffused over the community is so well known, as not to require any further comment: their form of government is also ascertained. The powerful armaments

tion Act passed under Cromwell, and the activity and enterprise of the natives of Britain, made them the competitors and rivals of the Dutch in that particular.

* If Holland lost any of its commercial influence, it arose more from the greater power and capital of other nations put in competition with that of Holland, or supplanting it in other markets. The United States were unable to withstand the power of Louis XIV. when he made the well known, unprincipled, and unjustifiable attack on that country. The superior power and capital, and equal activity and commercial enterprise of England, was also injurious to the monopoly of the Dutch. When the field of operations for commerce was contracted as formerly, what one party gained, was lost by the other. In the present day, so wide a field is opened by the commencing civilization of America, that little probability exists of future commercial jealousy; it will only exist in the rivalship of that country that can bring goods to market at the lowest rate.

which they were also enabled to fit out without the advantages of soil or climate, with no other assistance than their commercial activity and enterprise, show what they could perform. When other nations, more powerful, possessed of greater advantages, exerted the same commercial activity, it is clear that their power and wealth would become proportionably great. Reference is made only to the state of Holland previously to the French Revolution. Since the general peace, that country has been united to Belgium, and considering the activity of the people, it is likely that an extensive middle class of society will arise, possessing the requisites for the formation of public opinion. The form of government, as is always the case, will be the index of the state of public opinion.

The Hanse Towns afford another and a very remarkable instance of the power of public opinion, arising from the creation of wealth and civilization in the last century. A singular mistake seems to have arisen, not only with regard to these free towns, but applicable to almost every place that enjoys any particular privileges. This mistake is so often made by historians, that much confusion is created in forming a clear comprehension of the manner in which they obtained their rights. Historians assert that such and such towns obtained privileges, in consequence of which their trade flourished; on the contrary, these privileges were granted, or rather obtained by the love of liberty, generated by the diffusion of wealth, the increase of a middle class, and of public opinion in those places which rendered them

sufficiently powerful to demand or purchase their privileges from whoever claimed or possessed the right to grant them. This remark seems to apply to almost every privileged place or corporation that can be named; not only to the Hanse Towns, but to those cities or towns that enjoy certain rights in every part of Europe *.

The Hanse Towns seem to have risen into importance, from the facility for commerce arising from their situation, and by the ignorance in which Europe was plunged at that time. They were possessed of great part of the carrying trade of the north of Europe. In these towns we perceive the same sentiments arising from the same causes: in proportion as they obtain the requisites for public opinion, and augment in wealth and in a middle class, they become free, liberal in their

* "The Hanse Towns, at present, are reduced to these six, viz., Lubeck, Hamburgh, Bremen, Rostoch, Dantzic, and Cologne. In the most flourishing times of the confederacy, the Hanse Towns had four general staples for the sale of their merchandise, viz., London, in England, Bruges, in Flanders, Bergen, in Norway, and Novogorod, in Russia. This confederacy grew so powerful, that they (who at first made it only for the security of their trade and mutual defence against princes) attempted a war against Waldimir III., King of Denmark: their fleet went to Copenhagen and put the king to flight, and took Schonen, which they kept sixteen years. They sent another fleet, A. D. 1428, against Eric, King of Denmark, with 12,000 land forces, and put him to very hard shifts. In 1615, they relieved the town of Brunswick, besieged by the duke of that name. They had formerly for their protector, the great master of the Teutonic order, sometimes the King of Sweden, sometimes the King of Spain, as sovereign of the lay countries; but they have been a long time without any protectors."—Hessius's *History of the Empire.*

form of government or internal legislature; they form a sort of confederacy with each other, resembling, in some respects, a federal union, each retaining that sort of government within itself most agreeable to its institutions, or rather to the proportions of the several classes of society to each other; and at the same time, securing their independence against foreign aggression, by uniting in a general congress or confederation established for the security of the whole *.

When the Hanse Towns entered into a federal association, (A. D. 1428) Europe was little civilized. There was no probability, four centuries ago, of their meeting with any rivals or opposition to their commerce. The instance of these towns alone is sufficient to prove our position, of the influences of public opinion over the form of government in a civilized community, and the other assertions so often made in the foregoing pages. It will be unnecessary to tire the reader with any further

* The Hanse Towns were at the greatest extent of their power at the time when the United Provinces threw off the yoke of Spain; from that time, in proportion as the Dutch, by their commercial activity, supplanted them in the carrying trade, they declined in commercial influence. At the period of their first formation, the population of many states in Europe was nearly barbarous. In proportion as they had no competitors to rival their commerce, it proved profitable, and they possessed a monopoly. Many of these towns may now revive, but it seems with this difference:—formerly they obtained much of the trade, such as it was, from the ignorance of the nations in their neighbourhood; they may now again advance, in consequence of the spirit of enterprise and demand for manufactured goods becoming so general, from the civilization of the formerly barbarous population in the interior.

instances with regard to this commercial association, which any one can verify by reference to the chronicles of those times.

Let us now refer to another example in the Swiss cantons.* The cantons of Switzerland, for a considerable time, have enjoyed a degree of liberty, or freedom in the government, little known to their neighbours on the continent in the last century. The requisites for the formation of public opinion were, to a certain extent, in existence, and a middle class of society formed. Now, as these could not be created by commerce or manufactures, neither being much practised by the Swiss on account of their local situation, whence could arise that formation of the requisites for public opinion, which enabled the people of this country, at an early period, to form in each canton a government supported by public opinion, and a confederacy for the security of the whole, in short, to establish their liberty † and inde-

* The Swiss cantons did not create their middle class from commerce, being, by their situation, and difficulty and distance of access, from the sea, precluded from any advantage of that description. They seem to have created this class by their moral principle, frugality, services to foreign states, and also by the subdivision of the landed property that arose from causes stated above.

† In the common run of histories, the liberty of the Swiss is attributed to their love of liberty, as if one set of people were more desirous of being free and happy than another; as if their liberty and independence did not arise from those circumstances that gave them sufficient information and unanimity to establish a liberal government, and to withstand foreign aggression. The desire of liberty is common to mankind: it is not merely the desire of freedom that makes an individual free; it is the possession of the requisites for public opinion, that create the power in communities to obtain liberty.

pendence? The country of which the cantons of Switzerland are composed, is less rich than the neighbouring states *. The want of fertility in the soil, the local means of defence, and the courage of the people, often deterred more powerful nations from ideas of conquest; and though subdued and occupied, Switzerland, unlike most of the other states of Europe, was not separated into feudal divisions, in which the barons, the crown, and the church, were proprietors of the land. The same causes, the poverty of the country, and the difficulty of invasion, preserved it from the wars that desolated Europe for so many centuries. In consequence of this state of things, the property in the land was more subdivided than it could be in other countries where feudal tenures existed; and the result was, that a middle class of society existed in Switzerland, (though one of very moderate means,) whilst, in the other countries, the barons, the church, and the crown, were in possession of the land, and with the lower class, without any middle one, formed the community. The Swiss not finding occupation at home, were in the habit of hiring themselves to foreign states, and, after a lapse of years, to return with the amount of their wages or savings into their own country. By these means, the capital of the country was augmented, and the middle class in existence

* Zuinglius preached the reformation in the Cantons, some of which, Berne, Zurich, Basle, and Schaffhausen, followed his doctrine, in 1530. In all probability had the people in those Cantons been utterly ignorant, they would not so readily have embraced the doctrines of the Reformation, but adhered to the tenets of the Church of Rome.

kept up and increased. The people, from the nature of their soil and situation, could not create much wealth; but were exempt also from the expense of keeping up great means of defence, or a permanent force: they were naturally industrious, and even parsimonious; and not, therefore, likely to diminish whatever capital they acquired. We find, on referring to the history of the Cantons, that at an early period the requisites for public opinion made their appearance amongst them, and the consequences that followed in their government were the establishment of their liberty and independence. In all probability, as the activity of other nations extends, it may be more difficult for the Swiss to obtain situations in foreign countries, and if their population increases; and the capital of the country does not augment in proportion, the middle class may have a tendency to extend into the lower class. However, this is only a surmise on an occurrence which, it is to be hoped, for the happiness of that people, will not take place beyond a certain extent *.

* The state of the Swiss Cantons has been alluded to, such as it was before the occupation of that country by the French troops. The local governments in the several Cantons strongly exemplify our observations on the influence of public opinion, in a civilized community, where no foreign force interferes. In all the Cantons there seems perfect security of person and property, established by law; in some the upper class is greater in proportion to the middle class, than in others: in such Cantons the form of government is more aristocratic, and in the hands of the upper class: in others, the middle class has the preponderance in numbers and property; there the chief power of the state is vested in an assembly elected accordingly. In former days, before civilization had much extended over Europe, the Swiss were assisted by the smallness of their ter-

§ 38.

On the State of Turkey.

It may seem of little use to refer to a country where it is evident no such sentiment as public opinion exists, to ascertain to what amount it is to be found. Allusion is made to Turkey, to exemplify the position laid down regarding public opinion, to show that the absence of the requisites for public opinion produce despotism, as certainly as their prevalence in a community produces liberty and a constitutional form of government. In Turkey, there is neither true religious feeling, information, facility of communication, nor any of the requisites for the formation of public opinion. The people are in perfect ignorance, a fanatical sentiment is inculcated and encouraged, little or no commercial or manufacturing industry is exercised, the result is, what under similar circumstances it must ever be, there is scarcely an upper or middle class of society; an immense lower class only, equally poor, ignorant, fanatical, and barbarous; a despot invested with uncontrolled power over the lives and property of the people, is set on the throne, who is represented by his officers in every part of his empire; these distribute justice and administer laws as they think proper. Such a state of things is deplorable, but

ritory, in forming their federal republic, as this afforded them the means of facility of communication, and the sentiments of the people were easily communicated to each other, and ascertained. In Zurich, Soleure, and Berne, the government is aristocratic, or in the upper class: in Basle it is in the middle class.

under the circumstances in which the nation is placed, it seems difficult to say what other form of government could be adopted. The people, ferocious and ignorant, must be held in awe by some sort of power; if not kept under by despotism, they might probably be in a state of anarchy, which would annihilate the community. Some sort of order must be established; and it seems difficult in a nation so situated to establish it without despotism. As none of the requisites for public opinion are in existence, no upper or middle class of society, no materials exist for the formation of any other form of government. Under such circumstances, it seems scarcely doubtful that, if no progress was made in civilization in Turkey, if none of the requisites for public opinion were acquired by the people, if the same fanatical influence of the priests of Mahomed continued, the Turks might remain under such a despotism to the end of the world *.

To show how necessary it is for a people to be possessed of a certain degree of public opinion, before they can either have or retain a free government, let it be supposed that a perfectly free constitution was declared next week in Turkey; it would be a waste of words to shew that such a constitution might last about as long in Constantinople, as a despotism could at this moment

* The requisites for the formation of public opinion must be in existence to a certain extent; they are observable in a community, by the relative proportion of the upper and middle classes to the lower. In Turkey, there are scarcely any upper or middle classes; the whole population seems to consist of a lower class.

continue in England, supposing in neither case a foreign force interfered. The assertion, made at an early period in this work, is here exemplified: as public opinion increases, the wealth, and, consequently, the power of the people augments in proportion; the state that remains in barbarism becomes less powerful in consequence. In former days, the power of the Turks was dreaded by almost every state in Europe. It was not that, in those days, the Turks were braver, or more inclined to conquer, or more fanatical than at present; it was because in those days the people of Europe were little superior in civilization to the Turks themselves; consequently, that the advantages of civilization now possessed not being then in existence, they were more on an equality with the Mahometans, and victory remained, in barbarous times, (when other things were equal,) to the hardiest, most numerous, and most ferocious people *. Of late, however, the case has been wholly different; the superior civilization of the Christians of Europe has rendered them an overmatch for the forces of the Ottomans, and should any occurrences bring about hostilities between them, the chances of war could scarcely be said to be equal. Turkey, therefore,

* The Turks advanced into Europe as far as the walls of Vienna, to which they several times laid siege. In the contests of the last century between the Russians and Turks, the difference of the civilization between the two nations was not such as to render one very superior to the other; but as Russia gradually made some progress in information, and the knowledge of European tactics, success generally accompanied her when engaged with the armies of the Sultan, which advantages will increase with the civilization of the Russian people.

like all other barbarous states, is left in this situation;—she must either excite her people to the exertion of their industry, to the establishment of commerce, manufactures, and the other means by which capital is created, and the requisites for public opinion formed, or she will remain passive, subject to a despotism, and the people enslaved and barbarous. In the former case, she becomes, by degrees, civilized, and the sentiments common to human nature, love of liberty, security of person and property, make their appearance on the ruins of ignorance, fanaticism, and slavery: in such a case, the present form of government falls as a matter of course; or, if a blind fanaticism and ignorance induces Turkey to remain as at present, she loses her power, if engaged in contest with other nations, in proportion as they become wealthy and civilized *.

§ 9.

General Remarks on the States of Europe.

In the sketch taken of public opinion from Great Britain to Turkey, it is impossible to come to any other conclusion, that, in every state which has been

* It is not sufficient for Turkey to establish the European discipline in her armies, and adopt the improvements of modern warfare; it is requisite that she should possess a certain revenue to fit out or keep up these armies, support the expense of naval armaments, and all other attendants on a state of war. This cannot be done without creating a spirit of activity, the result of which is the creation of capital and of a middle class, and the other consequences already mentioned.

considered, in proportion as the power of public opinion, and the extent of its requisites is prevalent in any country, so is a liberal and constitutional form of government. In Great Britain, the requisites for public opinion are more general than in any other part of Europe. In Great Britain there is more wealth, a more extensive middle class, and a more constitutional form of government, than in any other country in Europe. In Turkey, the reverse of the position holds in every respect. In all the other states, in proportion as they approximate to Great Britain in the requisites for public opinion, in the same manner do they incline towards liberty and constitutional government. After a few more remarks, we will take a hasty glance at the other parts of the world, where we shall perceive exactly the same results.

The principal states of Europe, and the situation of their respective governments, appears to prove how much the formation of such governments depends on the state of public opinion, and the civilization of the community in which they are established. In every community of Europe, whose situation, in a political point of view, has been considered, the result is, that in proportion as the requisites for public opinion are extended amongst the people, in the same proportion does the form of government become liberal and better adapted to secure the person and property of individuals. This subject will be again alluded to in the last chapter: it seems, therefore, unnecessary to say more on the subject at present. The anxious endeavour of

the writer, in these pages, has been to avoid the defence or condemnation of any particular political principles in any of those countries to which it has been necessary to allude. Many occurrences have, of late, taken place, which might have illustrated the subject and confirmed the position advanced, but, in consequence, they have been omitted. Sufficient evidence of the correctness of the position laid down has appeared; any topics of a later date, on which the minds of men may still be warm, might have proved injurious, by exciting something like the spirit of party, where nothing ought to exist but an earnest desire to investigate truth, and to draw such conclusions from the premises laid down, as cannot be refuted.

In the several states of society in which all communities are formed, generally speaking, those appear most inclined to war that are the most barbarous, which becomes not a measure of choice, but of absolute necessity in many cases. In the savage state, the hunting ground may not be sufficient for the support of all; one tribe, therefore, must wage war, and exterminate or drive away the other, or both may starve together. In these tribes, a state of hostility seems natural; it arises from their savage mode of life. In such a state there is no property, and, in fact, no distinct class—all are poor, and commonly in want of the necessaries for existence. In the pastoral, the necessity for war may not be so urgent; but whenever one tribe or assemblage takes possession of the pasture ground, of the wells, or of the particular plains to which the former was accustomed

to resort, the result usually ends in hostilities between them, which terminate in the annihilation or expulsion of the weakest. In this state, there may be a small degree of property in a few individuals, a very small upper class, and all the rest a lower class, which though not so destitute as in the savage state, must often suffer privations.

In the agricultural state, war would be seldom undertaken from any wish of the people themselves, but, in general, it arises from the desire of their rulers to become more powerful over their own people, or to extend their territories or their power over their neighbours. In this state, which seems to have been that of Europe for many centuries, there is a small upper class, but no middle one; and an extensive lower class, which may suffer from scanty seasons and other causes, but not so severely as in the two former states before mentioned.

In the improved or civilized commercial and agricultural state, where a large middle class has influence in the community, where the requisites for public opinion are in existence, and spread through the people, no wars will in general be undertaken, unless for some national object sanctioned by public opinion: such as securing the national independence; danger of foreign aggression; the desire to obtain certain situations favourable to the commerce or the industry of the people. Hostilities are not likely to be seriously undertaken, unless supported by public opinion, and, consequently, unless they are for the benefit or security of the nation, or some national

object, and that public opinion in the community sanctions the undertaking. This seems to have been the state of Great Britain since the Revolution in 1688. From this hasty sketch, the conclusion seems to be, that as communities became civilized, the chances of entering into hostilities became proportionably less; particularly as the expenses of war became greater. As civilization extends itself, the art of war is brought to greater perfection, and the burdens attendant on such warfare press more heavily on the community.

Chapter VI.

State of Public Opinion in America, and other Parts of the World.

§ 1.

On Public Opinion in the United States of North America.

The first object in tracing public opinion in any country, seems to be, to ascertain the relative proportions of the several classes of society towards each other; if the upper and middle, or rather the middle class (which, as before observed, must exist in a civilized country, where an upper class is found) are numerous, then public opinion, provided civilization exists, is powerful. When the United States were first colonised from Great Britain, the settlers found an immense tract of fertile land, a propitious climate, navigable rivers and good harbours; the result was, what might be naturally anticipated. Almost every individual of the lower class, possessed of activity and industry, became the proprietor of a certain portion of land, which he cultivated; his children, if endowed with the same habits, had the same advantages; and thus, in an incredibly short time, a powerful middle class was formed by agriculture alone. This, in Europe, would be anomalous, and such a state of things as could not take place for centuries.

Civilization and public opinion depend on the relative proportions of the several classes to each other, and on the requisites of public opinion. In Europe, a middle class could only be raised by commerce or manufactures, as no other means remained for them to create capital, the land being occupied by the crown, the church, and the upper class; but in America, the settlers or their descendants brought into the field all the activity, agricultural knowledge, and improvements of the Old World, and found before them an immense tract of land ready for cultivation: with the extension, therefore, of population, and the cultivation of the land, did a middle class grow into existence. Facility of communication was obtained by the rivers and sea-coast: the other requisites for the formation of public opinion all grew into some degree of maturity; and these, even so far back as forty years ago, were such as to enable public opinion to raise the whole community against the mother country, and to obtain their independence.

Thus was the singular example afforded, of a state, chiefly agricultural, obtaining a middle class, and thereby establishing its liberty and its government by public opinion on a secure foundation *. In the United

* Perhaps the Swiss Cantons in Europe are the only agricultural states where any sort of middle class or of public opinion was to be found, independently of that caused by capital created by commerce or manufactures. The same cause, therefore, must have taken place in Switzerland, or in the United States of North America; the land must have been possessed by a middle class instead of the crown, clergy, and noblesse; in short, the feudal system seems not to have been established in the Cantons. Whether this arose from their situation, or the poverty of their soil, and the tenacity with

States, every person in the lower class, possessed of prudence, of activity, and of frugal habits, might expect to enter into the middle class, by cultivating the land, as before stated. His children might, and probably did, follow his example; and thus the increase of the middle class of society at present to be found in America, and the consequent rise and formation of public opinion, may be traced: liberty, and all the blessings attendant on civilization, and on the strength and influence of public opinion, followed as a matter of course.

In any old states, such as those of the European continent, similar results may, at no long period, take place; but then the formation of the middle class, and the requisite capital, can scarcely be created, unless by commerce or manufactures. As the cultivation of land, on account of the population of Europe, would not be sufficient to form a middle class so extensive in proportion to the lower as in the United States, it seems evident that such a middle class can only be formed in Europe as it was in Great Britain, by the increase of commerce and manufactures, and not by bloody revolutions, agrarian laws, or any theoretic plans. This makes a striking difference between the formation of civilized society in the New and Old World*. Public opinion, in the for-

which mountaineers defend their country, it is not here necessary to enquire; such is the fact, as appears from their middle class, and their system of liberty and government.

* The United States of America are likely to extend in population and in power; but it seems not likely that, for a series of years, they will be a great manufacturing nation. Capital in the

mer, may and does extend by the cultivation of land alone; in the latter, from capital created by commerce and manufactures. There is, perhaps, no country in Europe so favourable, from natural advantages, to the formation of a middle class of society, as the United States of America*. That the requisites for

United States is increasing, and there exists a large middle class of society, but this capital, in all probability, will be turned to agriculture, to the clearing of lands in the interior, from this cause,—that, so employed, it will be more profitable. As labour in a country where land is plentiful must naturally be dear, the individual who has capital will find it more profitable to obtain a good return by advancing it on the security of the land to be brought into cultivation, than by embarking in a manufacturing concern, with a difficulty to obtain hands, and a certainty of having to contend in the market with the capital, the improvements in machinery, and the cheapness of labour to be found in Europe. It is probable that the United States will continue to augment both in power, wealth, and population; that public opinion, already so powerful in that community, will not lose ground, but that, in all probability, the middle class will continue to increase. An additional reason for this, will be the quantity of produce which the nation can exchange for the manufactured articles of Europe, by a trade equally advantageous to both parties. As the population of the States increases in the interior, public opinion will probably be against a war, unless it be a defensive one, both from the natural tendency of public opinion towards peace, on account of the expense, and also from its placing a difficulty, if a maritime war, to their interchange with Europe.

* When the whole country is peopled, should population press on the means of subsistence, as in some of the states of Europe, the case, of course, will be different; but it seems doubtful whether this is probable, where public opinion, or rather its requisites, are spread through the community: in such a state, the foresight, and education, and feelings of prudence in individuals, prevent an overgrown pauper population.

In the United States of America, it must not be forgotten that,

the formation of public opinion are likely to extend themselves rapidly through North America, will appear, from the following reasons:—The spirit of activity and the love of liberty; in short, those advantages now possessed by the Americans, were adopted in the new state from the mother country: the climate and soil being favourable, and land in abundance, the results mentioned followed of course. Facility of communication was obtained by water conveyance, even before good roads could be formed: the natural consequence was an interchange of commodities, and the creation of capital, both by a home-trade and by exports. This capital had a tendency to augment the middle class: the augmentation so made, however, was trifling, when compared to that arising from the facility of obtaining land. The difference, therefore, between the formation of the middle class in England and the United States of America seems to be, that the former were created by capital arising from commerce, manufactures, and causes of a similar nature for creating wealth; whereas, in the United States, this class arose from the amount of land fit for agricultural purposes, which was to be obtained with such facility as to enable the industrious individuals of the lower class to obtain a certain degree of property, and to raise themselves into the middle class without great difficulty. Thus, although different causes have operated in Eng-

except in the great towns, population does not press on the means of subsistence; so that, in the interior, they are almost all settlers, and verging more towards the middle than the lower class.

land and America in the formation of the middle class, yet the same effect has been produced, a large middle class of society, which, under the civilization at present in existence, gives a power to public opinion, that cannot, in either country, be withstood.

Public opinion, it has been said, influences the form of government; this is fully exemplified in what appears in the United States of America. If, at the time that the United States declared their independence, the upper class had been sufficiently numerous, when compared to the middle class, the form of government adopted by the Americans, in all probability, would have been a monarchy, on constitutional principles, such as in England; but the upper class in America was not sufficiently numerous; no great estates were possessed by individuals, and no great accumulation of capital could have been made by trade, or manufactures, so as to enrich a number of persons sufficiently to form this class; the result was, that a republican form of government was established. A few wealthy individuals might then be found in America, but not enough to merit the appellation of an upper class. In the definition already given of the several classes of society, it appears that an upper class can only be so called when the individuals of which it is composed have a certain income, and their number bears a certain relative proportion to the other classes, the only definition of an upper class that can be admitted. In the United States, as the requisites for public opinion are general, as the middle class is considerable,

when compared to the others, the result ought to be, and such is the case, that public opinion is all-powerful, and liberty fully established.

Such seems to be the situation of the United States of North America. In what has been said, we have no means of judging of that country, but by applying the general principles laid down in the beginning of these observations, which may be said to be the measure of the extent of public opinion. As far as can be ascertained, it seems that these states confirm the rule laid down concerning public opinion, as powerfully as those communities in Europe to which reference has been made.

Having no personal knowledge of America, some allowance must be made for any oversight, or any ignorance we may betray of particular customs in the people. The broad and general principles already mentioned, seem to apply with sufficient accuracy to form a clear statement of public opinion in those states.

§ 2.

On Public Opinion in Mexico.

The observation made in the beginning, that, in proportion as the requisites for public opinion are general in a country, the form of its government is free and liberal, or the reverse, can scarcely perhaps be applied to a state so recently emancipated as Mexico. It is more desirable that the means of ascertaining the strength of public opinion in such a country were applied by those

who could form a judgment either from actual observation or from facts of undoubted accuracy, than for us to determine, from any dubious or biassed accounts which, relating to so extensive a country as Mexico, may be of a contradictory nature.

It seems that a certain portion of civilization, and of the requisites for the formation of public opinion, must be in existence in that country, to have enabled the people to make a successful resistance to the power of Spain: it may also be supposed that the middle class is considerable in proportion to the others, as a republican form of government has been adopted. In countries so circumstanced, a degree of activity, and a desire to improve their condition, is usually prevalent amongst individuals: the result of this seems to be, that the requisites for public opinion will continue to extend themselves, assisted by advantages of a local nature. In time, this country may rival in civilization the most improved parts of the globe. With more or less force, this remark may apply to the other parts of the American hemisphere. Like the United States, these countries possess immense tracts of land, well adapted for every sort of production, with a favourable climate: the people can now obtain and apply the inventions, and the science, and all the improvements that are made in Europe. The increase of civilization and power of public opinion in America may therefore keep pace with the increase of population*; and it seems probable that, for

* In Mexico, or any other state in America, where public opinion has lately manifested itself, much depends on the strength and infor-

some centuries, there will be a sufficiency of land for the formation and support of a large, and consequently powerful middle class, possessing in some measure the requisites for public opinion. This seems a probable result; and, also, that the requisites for public opinion and the middle class will extend themselves. The soil and climate of Mexico are favourable to the production of what is necessary and useful to mankind. Even before the appearance of the Spaniards in that country, the natives were an agricultural people. The Mexicans of this day appear, to a certain degree, active and industrious *. From the peculiar nature of the country, which, though extensive, is not possessed of navigable rivers, or harbours, in proportion to its ex-

mation of the middle class. No information as to the gradual rise of that class can be obtained from history, and no great dependence can be placed on the reports that reach us; the only means left of ascertaining the state of public opinion, is by the events that occur. The fact is, that the people of that country have been able to emancipate themselves from the yoke of Spain, and to establish a constitution. This alone testifies that public opinion has obtained a certain degree of power.

* The first Spanish settlers were probably indolent and more intent on the discovery of mines than the cultivation of the soil; yet in time, since the conquest of Mexico, a middle class has been gradually forming. It cannot be supposed that such a class can extend as rapidly in Mexico from agriculture, as is now forming in the United States. In Mexico, although land is easily obtained; yet as the nation has been formed, and agricultural land cannot be so plenty as in the United States, where the interior was only occupied by savages, who lived on hunting, and who retired more into the interior, as the settlers established themselves, in this latter country much assistance is derived to the formation of a middle class and public opinion, from facility of communication by water, which is not found in Mexico.

tent, it might be reasonable to suppose that the population may be more agricultural than commercial; that, as land could be obtained in plenty at little expense, an extensive middle class might be formed from those portions of the lower class, more industrious or fortunate than their neighbours. Now, taking this to be the case, and there seems no cause to think otherwise, as this supposition is confirmed by the accounts from that country, there is little doubt that the requisites for public opinion will extend themselves. It is not, however, necessary to dwell longer on this subject; we are desirous to avoid all hasty or theoretic suppositions, and only to determine from facts.

§ 3.

On Brazil.

This comprises a territory of immense extent, capable of supporting a population in proportion. Judging from reports, it seems that this continent is scarcely occupied; some savages may wander about, and subsist by hunting, much resembling the savage tribes that were found by the first settlers in North America. When the sea-coast of Brazil was occupied by the Portuguese, the natives seem to have been in a state very inferior (if the Spanish chroniclers are to be believed) to those inhabiting Peru or Mexico. At present, this country presents an almost boundless tract of land, with a climate highly favourable for raising nearly all the productions useful to man. The settle-

ments of the Portuguese at Rio, and other parts of the coast, must, in the present state of things, necessarily become places of trade, and depots, where the manufactured articles of countries more advanced in civilization are brought and exchanged for the produce of the country. The natural consequence seems to be, that activity and commercial industry may, in time, be generated in those settlements; this will create capital, and civilization, and a middle class, and the result, the influence of public opinion, is certain. Many of the new settlers, excited by that spirit of activity, and the desire to improve their situation, may clear and cultivate the land in the interior by degrees, and by agricultural means, form a middle class of society, following the steps with the same results, though probably in a slower proportion, than the settlers in the United States of America.

An appearance of public opinion may at this moment be manifest in the commercial towns on the sea-coast; but in all probability, such a sentiment cannot have extended far into the interior, where few of the requisites for its formation are yet to be found. At this time the community in Brazil is formed of a population inhabiting the towns on the sea-coast, where facility of communication can be obtained, and where the middle class and all the civilized part of the community exist: the remainder of the people consists of savages, wandering through those immense regions, searching for food, and living almost entirely on the produce of the chase, or what the land produces with-

out cultivation; ignorant of the manner of tilling the earth, or of the means of obtaining those blessings of plenty and civilization, which it is probable, in the course of years, active settlers may command and extend, thereby creating a middle class of society, nearly under similar circumstances as that formed in the United States of America *, possessed of the requisites for public opinion.

§ 4.

On the State of Public Opinion in Peru, Columbia, Chili, Buenos Ayres, &c.

There is no necessity to enter into a particular account of the state of civilization attained by these states: from their successful attempt to be free from the yoke of Spain, it seems probable they were capable of being influenced by public sentiment, and were actuated by the impulse of wishing to become free; that they have succeeded is notorious. Their soil and climate are favourable for the creation of capital; their rivers,

* It may seem a matter of doubt, whether the settlers, particularly those by whom this country is first colonized, will not find obstruction and inconvenience from the climate. In North America, the similarity of climate to that of Great Britain not only assisted the first colonists, but familiarized them, if the expression may be allowed, to the country. The difference of climate might, probably, retard, for a time, the progress or extent of population. It seems, however, of little service to the question before us, to enter into any speculative ideas on the future state of Brazil; the general observations made above seem sufficient for the purpose of explaining and tracing there the present and future probable state of public opinion.

harbours, and line of sea-coast, qualify them to become a commercial people; and considerably assist facility of communication. Civilization is fast increasing. That desire of improving his condition, and of increasing his comforts, which, if called into action, may be considered as the chief source of the prosperity of states, and of the creation of wealth in all communities, must necessarily increase in these countries, and with them the requisites for the formation of public opinion.

What has been said of Mexico, or of any state in the other hemisphere, will apply equally to others, either in a greater or less degree: there seems no doubt that, sooner or later, those communities which have established themselves into separate governments, will be influenced by public opinion, some may be actuated by that sentiment at this moment—others, shortly; at any rate, it seems reasonable to suppose that it may ultimately be powerful in each of these communities. In scarcely any do we observe that sort of government which evinces a despotism, and denotes the total absence of the requisites for public opinion, an entire absence of civilization, and of the middle class of society: on the contrary, in most, a form of government and a constitution have been established, which are evidences of the influence of public opinion, and of a degree of civilization *.

* It may be imagined that the bigotry established, generally, in those countries, amongst the lower class, and the influence of their priests, might prevent the activity, and the other requisites so necessary for the growth of capital, and the power of public opinion

Perhaps, situated as the continent of America is, it may rise faster into civilization than other parts of the world which have been partially improved, and where a more extensive population is to be found. If the United States of America had been inhabited by a people sufficiently civilized to cultivate the earth previously to the settlement from Great Britain, the first colonists could not have found the same facility in obtaining land; the indigenous population would not have so readily adopted the improvements of Europe, or been so active as the settlers; the consequence would have been, civilization could not have advanced, or the requisites for public opinion be established with so much facility. The inhabitants of the Spanish colonies will exert themselves * to procure European manufac-

Two hundred years ago, or even much less, such an apprehension might be more reasonable than at present. It is clear that in the bigotry engendered amongst the people in catholic countries, the religion itself is not to blame, but the improper influence of the clergy, and their endeavours constantly to turn the mistaken religious sentiments of the people to their own influence or advantage. This being the work of individuals only, amongst them some may be found of a more liberal feeling. It would, perhaps, be incorrect to conclude, that, wherever the Catholic religion is prevalent, there bigotry, ignorance, and a want of proper religious feeling is always to be found as a matter of course. In South America, it seems, the people retain the religion in which they were brought up, the religion of their fathers: it does not appear that the clergy are likely to hold their power, or become possessed of those temporal advantages formerly so coveted by the clergy of Rome. This being allowed, it seems probable, that the increase of the requisites for public opinion will gradually lessen their influence over the people.

* The Chilian or Peruvian, to obtain European goods, must give an equivalent in return, either of natural produce or manufactured;

tures; this exertion produces national activity, so essential to the creation of wealth in a nation.

It seems that where a country is occupied by savages, subsisting by hunting, or by the casual produce of the woods or waters, there is greater probability of its being quickly peopled by colonies from civilized nations, possessed of activity and the desire of improving their situation, than if such colonies are established in a country that is already occupied by an agricultural or even pastoral population. Supposing that part of India where the population is agricultural, and part of Arabia where it is pastoral, had been colonized from Great Britain, at the same time with North America,—at the end of a given period, say one hundred years, the population and the civilization, and consequently the power of public opinion, would be greater in America, than in India or Arabia, from the circumstance that the prejudices, bigotry, and rooted habits of idleness, would require time, in those countries already peopled, to be eradicated; but where the land was unoccupied, the requisites for public opinion would extend themselves with the new and increasing population.

For this reason it seems probable that America may become civilized, and possessed of the requisites for public opinion, before Asia or Africa.

in either case a certain degree of industry must be exercised. This industry adds to the aggregate of national wealth; information and civilization follow; and the influence of the Catholic clergy, beyond the proper exercise of religion, is at an end. Such will be the advantages gained by America from opening her ports to foreign nations, and encouraging a mutual interchange of commodities.

§ 5.

On Public Opinion in Asia.

This portion of the globe affords as convincing an instance as any that can be adduced, of the correctness of the position laid down regarding the requisites for the formation of public opinion.

In population, in extent of territory, and in many of those advantages desirable for the production of capital, Asia is perhaps superior to Europe. From authentic accounts, it seems probable that Asia was peopled before our part of the globe. Centuries ago, whilst the whole of Europe was in barbarism, Asia had organized societies, established governments, and possessed an extensive population.

The extensive empires that existed, and other circumstances, testify that the inhabitants of that portion of the world had attained a certain point of information, and even civilization, long before either had extended to Europe. Whence does it, under such circumstances, happen, that the people of Asia have attained to a certain point in the scale of civilization, but have never gone beyond it; that, with organized governments, they never succeeded in establishing a constitutional one, or secured their liberty, in short, that public opinion never manifested itself in those regions? Notwithstanding the wealth of the country, the industry and activity of many of its people, possessing a soil and climate favourable to the creation of capital, yet liberty and security of person and property have not been established: on

the contrary, Asia has always been subject to a grievous tyranny; despotism, in its most hideous aspect, has stalked through the land, and violence and insecurity have always been common in that part of the world. The people of Asia resemble other human beings; they have, in common with other people, a wish for independence, to be governed by equal laws, and to be secure in their lives and properties. It is unreasonable to imagine that the Asiatics are fond of slavery and dependence, and of the evils attendant on despotic governments. How, therefore, has it arisen that public opinion has never been apparent in the formation of their governments?

Amongst the requisites for the formation of public opinion, one of the first and most important is, a proper religious feeling or moral principle, which, if wanting in a community, public opinion cannot be said to exist*. This moral principle has, in a great degree, been wanting in the people of Asia. The de-

*. In the Introduction, this subject has been already mentioned in its proper place. It will, therefore, only be necessary to observe, that, in a free country, if moral principle is wanting there is an end of liberty, or of security of life and property. To give an instance; suppose trial by jury is established, and the individuals in a community have not sufficient moral principle to regard their oaths or to render justice, but are to be biassed either by interest or other feelings, it would follow that no person's life or property would be secure; and, consequently, such a mode of trial, which is perhaps the best proof of liberty and of a free constitution, would be of no avail, and would probably soon be disused, if established, in whatever part of the world, say Asia, where it could not be used with advantage. For any particular people or tribe to have a free constitution, it follows they must have sufficient requisites for the formation of public opinion, to enable them to preserve it.

ficiency of this requisite for the formation of public opinion has prevented them from enjoying a constitutional government; it has prevented public opinion from being sufficiently powerful in any community to establish such a government *.

That moral principle inculcated in the pure precepts of Christianity has been deficient in Asia, and until a nation or community can be cemented by such a sentiment, the main prop of public opinion is wanting. Some of the requisites for public opinion are found, to a certain extent, in portions of Asia which have become civilized, but to a certain point only. They have, in consequence, been obliged to submit to despotism, not from choice, but necessity; the power of public opinion was not sufficient to secure free institutions amongst them. Industry, and its consequences, a certain amount of wealth, and facility of communication, though limited, were in existence; but these requisites alone are not sufficient without the others to establish public opinion.

In corroboration of this statement, it does not appear that Egypt (if that country is allowed to be in this quarter of the globe) that China, that Persia, in short, that any parts of Asia have ever enjoyed the institutions of a free people; yet the intelligence of the inhabitants in some of these countries is great, their

* Historians, in speaking of Asia, are apt to assert that the people of that quarter of the earth are fond of a despotic government; that is, they imagine that any man, or assemblage of men, will, of their own accord, become subject to the caprice of a tyrant, and give up their property as he may think proper. Such a sentiment is not natural, and does not exist in human nature.

creation of wealth considerable, but there is no probability of their extending further, unless the requisites in which they are deficient should become prevalent.

Fanaticism has a powerful hold over the human mind; when allowance is made for the difficulty of acting against this feeling in nations, it must be allowed that the chance of public opinion becoming powerful in Asia in a short time, is less than might at first be imagined. Some portions of that immense territory may, of course, form exceptions to this observation, which is only made in a general manner.

Asia has an immense population spread over an extensive portion of the earth, speaking different languages, under various temperatures, and cultivating different soils, possessed of some wealth, and some civilization, but not likely to improve with rapidity; possessed of the means, though not perhaps the inclination, of obtaining the requisites for public opinion, which would lead to the formation of free communities, favourable to the happiness of mankind.

§ 6.

On Public Opinion in Africa.

What has been said of Asia applies with little variation to Africa. The population of this part of the globe is less, as also its wealth and civilization, than the other just mentioned. It is inferior to Asia in these advantages, and in another requisite for the formation of public opinion, which is, facility of communication.

Africa, in proportion to its extent, has few rivers, and the internal means of communication are equally defective. The interior of that immense continent is, perhaps, less known than any other part of the world; the result is, that the population continues as ignorant and as barbarous as it was a thousand years ago. Whatever progress has been made in civilization seems, as far as we can judge on very scanty information, not to have extended beyond a few villages. In time, the European settlers at the southern extremity of that continent may, aided by the command of an almost unlimited extension of fertile soil and favourable climate, spread themselves in the same manner as the settlers in North America. Whenever this takes place, the same results will probably follow; that is, a middle class may be formed. For a considerable time, however, they may not advance much in civilization, from the deficiency before observed, of navigable rivers, and consequent facility of communication, so desirable for the purpose of extending civilization.

The northern part of Africa, occupied by a barbarous and ignorant people, strongly imbued with fanaticism, does not possess many of the requisites for public opinion. The interior of that continent and the western line of sea-coast are little known, and in all probability are inhabited by ignorant and brutal savages. Excepting the new settlements already mentioned in the south of Africa, and the information that may be imparted to the people by their communication with Europeans, and by the interchange of commodities, no

great increase is likely to take place at present in the requisites for public opinion. Although Egypt has been mentioned in the last section, yet as part may be in Africa, we will observe that, in ancient times, Egypt was the seat of whatever learning existed in the world, and was probably civilized to a certain point; but from the causes before mentioned in Asia, (the want of a proper religious feeling, or moral principle,) she sunk again into barbarism, from which, in progress of time, she may again emerge, assisted by the facility of communication now so prevalent.

In these two quarters of the globe, Asia and Africa, a great population is at present in existence; organized in the former to a certain extent, and strongly influenced by a fierce fanaticism. It is difficult to remove early prejudices imbibed by individuals, much more in countries containing an immense population, which, under such circumstances, can only be informed, and become possessed of the requisites for public opinion, in a gradual manner. When the habits of a people, or of nations, are once formed,—when an ignorant and enslaved population is in a state of moral debasement, the progress of improvement, and of the extension of public opinion, cannot be so great as where the activity natural to the first settlers extends itself in an increased proportion as population increases. From this difference in the situation of the people of Asia and Africa, when compared to the new colonies in America, it appears probable that public opinion will increase in a quicker ratio in the other hemisphere than in the two former quarters of the globe.

Chapter VII.

§ 1.

Further Observations on Public Opinion.

From the hasty survey which has been taken, in the preceding pages, of the situation of the several communities in different parts of the world, it seems impossible to come to any other conclusion than this, that civilization increases the happiness of mankind*. It is impossible to imagine a more wretched existence than that of man in a state of savage life. Without the possession of the requisites already so often mentioned, without knowledge, or combination sufficient to achieve what cannot be effected by himself, man, in such a state, is little superior to the animals by which he is surrounded.

Let any one imagine a human being in an uncultivated country, without clothing or shelter, beyond what is thrown by chance in his way; supported only by the wild productions of the earth, or the uncertain result of the chase, both of which, from their nature,

* When applied to individuals, the word happiness, as said in the preface, is not similiarly applied as to communities; when applied to the latter, it is meant to convey the idea of a greater degree of comfort, of enjoyment, of clothing and shelter, of security from violence, and of the other advantages enjoyed by a civilized people.

must be precarious to man so circumstanced. In such a state, the privations suffered are beyond what can easily be imagined. The incessant search after subsistence, the uncertainty of procuring a supply, must force a man so situated to sink below the ordinary mediocrity of his nature, to fall some degrees in the scale of human intellect, and, thereby, approach nearer to the brute species. In such a state of existence, population does not extend itself, being checked by want of subsistence, and by the privations of every description to which savages are necessarily exposed *. The result is, that a savage population requires for its support an immense territory, in proportion to one more civilized: for example, a hundred savages could scarcely subsist by the chase, or other means, on a hundred square miles; that is, a mile square for each might be requisite †.

* See COLLINS's *Account of New South Wales*, Appendix, p. 596.

† "In that part of savage life where a great degree of equality exists, the difficulty of procuring food, and the hardships of incessant wars, create a degree of labour, not inferior to that which is exerted by the lower classes of the people in civilized society, though much more unequally divided. But though we may compare the labour of these two classes of human society, their privations and sufferings will admit of no comparison. Every thing that can contribute to teach the most unmoved patience, under the severest pains and misfortune; every thing that tends to harden the heart, and narrow all the sources of sympathy, is most sedulously inculcated on the savage. The civilized man, on the contrary, though he may be advised to bear evil with patience when it comes, is not instructed to be always expecting it. Other virtues are to be called into account, besides fortitude. He is taught to feel for his neighbour, or even his enemy, in distress; to encourage and expand his social affections; and, in general, to enlarge the

In such a state, civilization and population are equally below the ordinary result, and none of the requisites for public opinion are found. The next degree, or the first step towards civilization, is the pastoral state. Some families unite together, form a tribe, have some property in horses, or cattle, and take up their temporary habitations in whatever places are found most convenient or best adapted for themselves and their herds, without any fixed place of residence*.

sphere of pleasurable emotions. The obvious inference from these two different modes of education is, that the civilized man hopes to enjoy, the savage expects only to suffer."—MALTHUS *on Population*, b. i. chap. 5.

* "The limits to the population of a country strictly pastoral are strikingly obvious. There are no grounds less susceptible of improvement than mountainous pasture. They must necessarily be left chiefly to nature; and when they have been adequately stocked with cattle, little more can be done." Again, "The pastoral tribes of Asia, by living in tents and moveable huts instead of fixed habitations, are still less connected with their territory than the shepherds of the north of Europe. The camp, and not the soil, is the native country of the genuine Tartar. When the forage of a certain district is consumed, the tribe makes a regular march to fresh pastures. In the summer it advances towards the north, in the winter returns again to the south. Such habits would strongly tend to diffuse, amongst these wandering tribes, the spirit of emigration and conquest. In all their invasions, but more particularly when directed against the empires of the south, the Scythian shepherds have been uniformly actuated by a most savage and destructive spirit. In reading the devastations of the human race in those times, when the slightest portion of caprice or convenience often involved a whole people in indiscriminate massacre, instead of looking for the causes which prevented a further progress in population, we can only be astonished at the force of that principle of increase which could furnish fresh harvests of human beings, for the scythe of each successive conqueror."—MALTHUS *on Population*, b. i., chap. 7.

This sort of pastoral life was prevalent in former times, and is still continued at this day in parts of Asia and Africa. Less privations are suffered from want of food by pastoral tribes; but considerable hardships are undergone from want of shelter, from migrations, and from other causes. In such a state there is more information than in savage life, and the population is more considerable for the same extent of country: say one thousand in a hundred squares miles, or ten to each square mile. The reason that more information is found in a pastoral state is, there is not so great an uncertainty or so much time occupied in procuring subsistence. There is some sort of property of a personal nature *, appertaining to the fathers of families, or heads of the tribe, or to other individuals: amongst these some slight information may be found, and some tendency towards civilization. In former times the pastoral state seems to have been prevalent also in the northern parts of Europe †; it gradually decreased as the next state of

* It seems from this, that personal property in cattle or other things was perhaps the first description of property known, even before that in land was established. This being the case, personal property would be of greater antiquity than landed property.

† All the tribes of Germans spoken of by Tacitus, and those that opposed Cæsar in his wars in Gaul, appear to have been of this description. These tribes found no difficulty in going to war, or in making an invasion on the territory of another people: they had nothing more to do, than to drive their cattle before them, and with their families seek more genial climates and better pastures. It seems to have been scarcely possible to guard against the irruptions of these barbarians before facility of communication was in use. The first notice of their attack was brought by themselves; they fell like a torrent on the fertile plains, and swept everything before them.

civilization became more prevalent;—the agricultural state next followed;—that of a people with fixed habitations, possessed of a property in the soil which they cultivate, of some wealth, and subject to fewer privations than the other just mentioned. In the agricultural state, a sufficiency of shelter, of food, and of clothing, may be obtained for nearly every member of the community; the population, in proportion to the quantity of land, increases in a very considerable degree, say five thousand in a hundred square miles, or fifty for every square mile of land. There is no intention of being correct in this statement of the relative proportion* of the population to each square mile, but merely to give an idea of the difference in population as civilization extends itself from a state of savage life, to that state where public opinion has influence.

The next and last step in civilization seems to be that of an improved agricultural and commercial state (if it may be so called); such as Great Britain is at present; to which France is hastening, and to which it may be expected that every nation in the world will ultimately attain. It is a state where commerce, manufactures, and agriculture, all unite to assist each other, to promote the creation of capital, the inter-

* In this supposition we are merely taking the common state of agriculture as it was, and as it would be at present, if unassisted by the capital raised from commerce of manufactures, such as England was two centuries ago, as France was fifty years ago, and as many countries in Europe are in at this moment. In this stage of civilization there is great poverty, no doubt, but not that extent of suffering or privation such as may be, and most certainly is, felt by the individuals either in a savage state or in a pastoral one.

change of commodities, and the civilization of mankind, where public opinion becomes all powerful. It may be said, that of these four states in which mankind may be classed, the savage state is the worst, and the improved agricultural the best. In savage life there is scarcely any difference of class, because there is no property in existence belonging to the tribe. A chief or leader may have power of life and death, and may ill use the individuals of his tribe at his pleasure; his authority is founded on the ignorance of the others, on the necessity they feel of having a head, or chief, who can settle their differences, and decide without appeal. In this state, civilization, or property, is out of the question.

In the pastoral state, a species of personal property is in existence; that is, the horses, cattle, herds or camels, which generally belong to the leader or head of the family. In this state there is a lower class, consisting of those who have nothing, and who follow the fortunes of the chief, and depend on his bounty or caprice for subsistence, or on the families to whom the herds belong.

The agricultural state, in Europe, usually consisted of two classes, an upper one, to which nearly all the landed property in the country appertained; and an extensive lower class, great in numbers, and pressing closely on the means of subsistence: a middle class might sometimes be found, but small in proportion to the lower.

In the improved state of agriculture and commerce,

there is a large middle class, that possesses the greatest part of the landed and personal property in the community,—which increases in proportion as wealth and activity increase in the community; and in this state, civilization and the requisites for public opinion are most prevalent. The outline of the different degrees of civilization into which mankind may be divided appears sufficiently distinct; no further comment seems requisite to prove the position, that the extension of the requisites for public opinion and civilization augment the happiness of the community*. The greatest privations and wretchedness are felt in the savage state, and in proportion as civilization extends, and capital is created, fewer privations and misery are experienced, it may be said the happiness of the community is augmented with civilization.

In proportion as communities become influenced by public opinion, and civilized, there is less inclination for war, and they become more addicted to the arts of peace. A tribe of savages, that subsist by hunting, must necessarily be at war with the neighbouring tribe; if both meet on the same spot both may perish together, from want

* The different states of society, as they have existed in the world, and as they may probably be found at this moment, will suggest themselves to the reader. The savage state is exemplified in the savages of North America, of Africa, of many islands in the Pacific Ocean; the pastoral state in the tribes of Arabs, of Tartars, Kalmucks, &c. The agricultural state is apparent in many kingdoms of Asia and of Europe. The improved agricultural and commercial state is observable in Great Britain, France, the United States of America, and we will hope, in a short time, in the whole of Europe.

of subsistence; the hunting ground is insufficient for the support of both, beyond a certain number: savages, therefore, are usually in a state of warfare from necessity. In pastoral communities, the necessity for war is not so great, and yet pastoral tribes are often engaged with each other, to preserve their pasture lands from intrusion, or to extend it in proportion with their wants. It is evident, if a given quantity of land, one hundred square miles, can support by pasture a number of persons, say one thousand, if more are placed on it, some or all suffer in proportion, if no other land can be obtained. In agricultural countries, although the necessity for war for the sake of preserving existence is not so great, yet there is sometimes a redundant population ready to engage in any enterprise. When a small middle class exists, and the government is despotic, in such cases war takes place according to the caprice of the rulers, who reap the advantage, whilst the people suffer the consequent evils. In an improved commercial and agricultural state, wars are seldom undertaken but for the sake of preserving independence, or of obtaining some great commercial or political advantage; as they necessarily tend to impoverish the community, which governs itself by public opinion, and acts according to its interests: hostilities, therefore, are not likely to be undertaken hastily, to be waged with acrimony, or extended unnecessarily.

In every respect is public opinion likely to increase. It has been shown that this sentiment is augmented by industry and commercial activity, and increases them

in its turn, the same may be said of peace and tranquillity; such a state both increases the requisites for public opinion, and is also occasioned by the influence of that sentiment.

As the substitution of machinery for labour extends civilization, and the middle class, it cannot be said, in the aggregate of its effects, to be injurious to the community.*

In the preceding observations, much mention has been made of the middle class of society, and much importance attached to their opinion.

It has been shown, that, in proportion as civilization and capital are created, a middle class rises into existence. The reason why the middle class have so much weight in a civilized community, is simply, because they are not only possessed of the requisites for the formation of public opinion, we will not say in a greater degree, but in an equal one, with the upper class, but also that their number being much greater, the aggregate of talent and information may be greater. It has been stated before, that in a civilized state property is power: now the middle class in Great Britain and Ireland are possessed of property † to a greater amount than the upper class, and their numbers are greater in a still higher proportion. This amount of property is daily

* In the Essay on Population, Mr. Malthus observes, that "the constant and severe toils of the greater part of mankind are great." Now these are lessened by the improvement of machinery, and the increase of civilization, in proportion as the middle class increases more than the lower class.

† See note to page 172.

increasing, either by the creation of capital, or by the reduction of some of the upper class, to which allusion was made in a former chapter.

We have alluded to Great Britain being the country in Europe in which public opinion first obtained influence; the same remark, with regard to the extension and power of the middle class, may be applied to every country in Europe, in a greater or less degree.

The groundwork of civilization is security of person and property. This cannot be said to exist unless a proper religious principle exists in the community. We have adduced instances where civilization had made some progress in countries where true Christianity was unknown, but where, from want of this requisite, there was no moral restraint; the selfishness of human nature became apparent; property was insecure—seized by the most powerful, and the progress of civilization retarded or destroyed. It is evident that moral principle, which can be founded only on proper religious feeling, must exist to afford security of life and property, to counteract whatever evil propensities exist in man's nature, and to correct the various ills apparent where this principle is wanting amongst the sons of humanity.

It may be asked, if this is the case, how happens it that, during the middle ages, when Christianity was professed by nearly all the nations of Europe, so much barbarism and so little civilization was to be found? The answer is plain. In those days Christianity existed only in name; no proper religious or moral feeling was in existence in any community. The people were ignorant and bigoted; the clergy were, some of them, it

is probable, devout and sincere, others the reverse; the people were not instructed in proper religious principles, but remained in complete ignorance: certain forms were substituted, in which religion was supposed to consist. The upper class were, in these matters, little better informed; they tyrannized over the lower class; followed their kings to the wars; committed all sorts of excesses on their enemies abroad, and on each other at home; and when, from age or illness, unable to continue such a course of life, absolution was obtained, some lands were bequeathed to the church, and the individual persuaded himself full atonement was made.

A community so ignorant and bigoted, so destitute of nearly all the requisites for public opinion, can scarcely in the present day be imagined. The Reformation took place. In proportion as a proper sense of religion, an obedience to the precepts of Christianity, and moral principle became prevalent in England, in the same proportion did civilization, and the other requisites for public opinion, increase; the former assisted the latter.

Thus did proper religious principle, civilization, and the other requisites for public opinion, advance together, hand in hand, and promote the well-being of the community. By degrees, the atrocities committed* in former ages were looked upon with abhorrence, and a

* "Let any one reflect on the endless atrocities of the kings and emperors of the Greeks and Romans, and the destruction and devastation occasioned by them over towns and nations; on Timur and Chenghiz Khan, who aid waste Asia; on all the horrors that

better feeling of man towards his fellow-creatures was produced!

The first tie and bond of union in the community are the simple precepts of Christianity, which operate more on the human mind, have more influence in causing the wealthy to assist the poor, and the latter to respect the property of the former, than is easily imagined*. The consequence, in the increase of wealth, civilization, and the requisites for the formation of public opinion, is apparent.

§ 2.

Retrospective and future View of Public Opinion.

On tracing the progress of public opinion to the present time, it is difficult to avoid coming to the following

have in former times been committed, and we shall perceive that we are indebted to Christianity for certain political rights, and a certain law of nations in war, which unenlightened human nature could not recognize."—MONTESQUIEU, *Spirit of Laws*, b. xxiv. chap. 3.

* The unequal division of property necessarily and naturally taking place in any community, renders the influence of wealth considerable. Wealth is the command of labour; whoever possesses it, therefore, has the command of the labour of so many others, during which time the parties under such influence are, in some respects, like the slaves of the employer: at the same time, he is not bound by any law or any principle to retain them longer in his employment than he may think fit; so that instead of the responsibility that attaches to a master to take care of his slaves, the employer, in a free country, the moment he has paid the just wages due, is at liberty to turn them off at pleasure, and then they run the risk of distress before another employment is obtained. How much is this softened by the principle of true religion, and how well are men, both the employed and employer, taught to be submissive to such enactments as are the results of natural dispensations!

conclusion, which is, that three hundred years ago the requisites for public opinion could not be said to exist in any community. They might, and no doubt were, possessed by some individuals; but these were not sufficiently numerous to make them general.

Let the history of any country in Europe be perused, or that of any other part of the world; let it be ascertained whether the requisites for public opinion were in existence—these, with few exceptions, will be found to have been deficient. The great mass of the people were, in Europe, in a state of ignorance; there was no middle class, little information, the comforts of civilized life were nearly unknown, even the necessaries for the support of life were sometimes deficient, and at times the greatest privations must have been suffered by the people. This will appear evident on considering, that no capital, or facility of communication existed: if therefore a deficiency of produce created a scarcity in one district, it was scarcely possible to remedy it by the superabundance of another, as no means of conveyance were afforded; and even if facility of communication had existed, which it did not, there was no equivalent to give in return, no commodities or surplus wealth to purchase what was wanted. The people were not only ignorant, but poor, and destitute of the means of making an exchange.

Probably less credit ought to be allowed for military renown in former times to those who overcame nations, than one is apt to give, from the inflated accounts of historians. When Cæsar landed in Britain, he

might be opposed by a crowd of half-naked natives, who could make no effectual resistance to the discipline of the Romans: the same may be said of other parts of Europe for many subsequent ages. In those days, whatever wealth existed was engrossed by the government*: in the present day the wealth belongs to the community †, and is distributed amongst the several classes of society. In former times it was impossible for the people to have any influence or power, or means of obtaining the requisites for public opinion ‡. Even if we take a much later period, if we

* All public works were then magnificent, as the labour and entire exertion of the people was employed on them, not on themselves. In Egypt, for example, if an entire population was brought to labour on the pyramids or other works, the time and labour bestowed on such works might have built, for all the families in the land, comfortable habitations, and created a middle class. These works, undertaken in days of poverty, in such a people, show the despotism that existed, and the little influence of public opinion.

In the present day, the erection of public structures being sanctioned by public opinion, shows the superabundant wealth of the community laid out for the purpose of affording employment to the lower class.

† How much individual comfort has increased with civilization appears from what is to be observed of the comforts of individuals in the remains of Pompeii, buried nearly eighteen hundred years ago. In the houses of that place, one private house only had rooms large enough for an English bed: the apartments in the others resembled small cells. At the time that Pompeii existed, Italy was the only wealthy and civilized part of Europe; its inhabitants, therefore, were much superior in accommodations and luxuries to any other people of the known world.

‡ In those days the people could have no influence: they were as little considered in questions of peace or war, or state policy, as post-horses may be on the expediency of taking a journey. Millions of human beings were sacrificed to the caprice of their

look back only a century, and take into consideration the existing state of the people, and the change that has occurred, the improvement since that period is most extraordinary. Instances can be adduced to prove the alteration that has, of late years even, taken place*:

ruler, or to a mistaken policy. This may account for the wars that have desolated Europe for so many centuries, which were not so excusable as those between savage hordes or pastoral tribes, where the limited space for hunting or pasture made it almost necessary that one should drive out the other, or both suffer alike. By degrees, however, as the people understood their own interest better, they felt a repugnance at entering into hostilities. It is curious to trace the repugnance manifested, although so little information existed in the time of Henry VIII., who had some difficulty in driving his people into a war for which they had no cause, could foresee no advantage, and were certain to undergo the attendant burdens and privations.

* The following instances are taken from the *Archæologia* of the Antiquarian Society.

"Not earlier than the year 1638, Mary de Medicis, the Queen Mother of France, visiting her daughter, Queen Henrietta, entered London in a litter carried by two mules. Mary, Queen of Scots, while under the surveillance of the Earl of Shrewsbury, appears to have travelled on horseback in her various journies. In a letter to Lord Burghley, that nobleman alludes to a fall the queen had sustained from her horse, when travelling from Sheffield to Buxton. In a letter from the same to his agent, T. Bawdewyn, the following is a picture of a journey to London in 1582. "I thynke my company wyl be 20 gentylmen and 20 yemen, besydes ther men and my horse kepʳˢ. I thynke to sett forwards aboutt the 2d of Sept. from Wyngfeld to Lestar to my bedde, and so make but four days journey to London." In the year 1640, the wife of Henry, last Earl of Cumberland, occupied eleven days going to London, and appears, from the state of the roads, to have ridden the whole way on horseback. "At this time, (1609) the communication between the north and the universities was kept up by carriers, who pursued their route with whole trains of pack-horses. To their care were consigned the packages and persons of the scholars. It was through

if more were requisite, there would be no end of them. Any magazine or paper of sixty years ago, serves to shew the increase of civilization, and of facility of communication, that has taken place.

§ 3.

Concluding Observations.

The several countries in which the community is influenced by public opinion have been enumerated, and our remarks, so far as they are applicable to these states, may be considered at an end. In our

their medium that epistolary correspondence was managed: a letter could scarcely be exchanged between Yorkshire and Oxford in less time than a month."—See *Archæologia of Antiquarian Society*, vol. xx., p. 460.

Again, in Dec. 1703, Charles, King of Spain, slept at Portsmouth, and the Prince of Denmark went to meet him: one of his attendants writes, "We set out at 6 o'clock in the morning, to go to Petworth, and did not get out of the coach (save only when overturned, or stuck fast in the mire) till we arrived at our journey's end. 'Twas hard service for the prince to sit 14 hours in the coach that day without eating, and passing through the worst ways that I ever saw in my life: our coach would have suffered very often if the nimble boors of Sussex had not frequently poised it, or supported it with their shoulders, from Godalming almost to Petworth."—*Archæologia*, vol. xv.

The following is in the Harleian Miscellany, vol. viii.:—"Coaches and caravans, if in use, are one of the greatest mischiefs that have happened of late years to the kingdom, mischievous to the public, destructive to trade, and prejudicial to lands; by destroying the breed of good horses, the strength of the nation, and making men careless of attaining to good horsemanship, a thing so useful and commendable in a gentleman; by hindering the breed of watermen, &c. &c." See *Archæologia*, vol. xx. p. 473. What would the writer say of the present day?

general conclusions, care has been taken that no warm or enthusiastic sentiment should entice us beyond the bounds of reason or probability. It appears that education, that a proper religious sentiment, and civilization, render individuals of all countries more alike, and that the difference between communities arising from climate, soil, or language, becomes less. The same reasoning and the same conclusions that have been applied in the foregoing observations, to trace the origin and progress of public opinion in England, hold, with little variation, when applied to any other country in Europe, or the world.

On taking a retrospective view of the state of improvement, of information, in short, of the progress of civilization, of public opinion, and the extension of the middle class of society, we have only to consider the former state of mankind, and then to ascertain their present condition: the difference is apparent; the causes by which it is occasioned are obvious, and accounted for from the principles laid down. That a very great amelioration has taken and is taking place in the condition of mankind, is the inevitable conclusion. Some disadvantages may arise from the increase of luxury, and abundance of capital; selfishness may be increased, and wealth may be courted by the mass of the people even more than formerly. That such feelings are injurious to the finest sentiments of human nature cannot be denied: that other results may also arise of an unfavourable tendency is probable: under every circumstance, however, much more is gained than lost

by mankind: the religious sentiment, civilization, enjoyment, and happiness of individuals, and of communities, is increased. Formerly, the industry of man seems to have been dormant; individuals and communities did not possess those advantages which late improvements have enabled them to obtain*. Man, it seems, has the power of attaining a certain degree of civilization and enjoyment, if his moral and physical energies are properly directed, of which, in a savage state, he is not able to avail himself: in proportion as the former are brought into use, the advantages arising from the latter are extended. The requisites for public opinion are augmented by these advantages. In proportion, therefore, to the extent of public opinion, seems to be the civilization and happiness of commu-

* This state of things in Europe seems to have been perceived by the late Emperor of France, when he alluded to the probable change arising from the increase of wealth, and, therefore, of personal property, now increasing so rapidly in some parts of the world.—"Jadis on ne connaissait qu'une espèce de propriété, celle du terrein; il est survenu une nouvelle, celle de l'industrie, aux prises en ce moment avec la première." "Il appelloit cette grande butte de nos jours, la guerre des champs contre les comptoirs, celle des crenaux contre les métiers. C'est pourtant (disait-il) pour n'avoir point voulu reconnoître cette grande révolution dans la propriété, pour s'obstiner à fermer les yeux sur de telles vérités, qu'on fait tant de sottises aujourd'hui et que l'on s'expose à tant de bouleversemens. Le monde a éprouvé un grand déplacement, et il cherche à se ressevir: voilà en deux mots, terminait-il, toute la clé de l'agitation universelle qui nous tourmente. On a désarrimé le vaisseau, transporté du lest de l'avant à l'arrière, et de là ces furieuses oscillations qui peuvent amener le naufrage à la première tempête, et l'on s'obstine à vouloir le manœuvrer de coutume, sans avoir obtenu un équilibre nouveau."—*Journal des Conversations de l'Empereur pas Las Cases*, Vol. IV. Part VII. p. 91.

nities. The creation of wealth and the industry of a people, with a middle class and civilization, all extend together. This seems the case in every country that has been considered, or to which allusion has been made*.

We trust that the hasty review of the several communities which has been made, will satisfactorily confirm our statement, that the government in a civilized community, possessed of the requisites for public opinion, is influenced by that sentiment. This has been exemplified in every country in Europe †, and elsewhere.

* To imagine that any great difference exists betwen nations, except what arises from their industry, civilization, and extent of the requisites for public opinion, seems a mistake. Whatever importance has been given (by the learned author on the Spirit of Laws) to the physical causes arising from latitude or climate, cannot weigh much against the advantages already mentioned.

† In Europe, take Turkey, in which there is little trade, or wealth, or civilization, or the requisites for public opinion, where the lower class are ignorant and fanatic, with a small upper and middle class: there pure and unqualified despotism is predominant.

Take Russia in the last century, or some other country in the eighteenth century, we find little information, a small upper class wholly dependent on the court, a large lower class, not so barbarous or fanatical as that of Turkey, but very ignorant; the result is, a despotism is found, not perhaps so perfect as in Turkey, but not far removed from it, the sovereign exercising both the legislative and executive power.

Take France during the reign of Louis XV.: we see the same system as in Russia established, but a middle class and the requisites for public opinion making their appearance, and contests arising between the parliaments in the several towns (that is, the middle class) and the court, concerning the king's prerogative.

Take England with its extensive middle class, its perfect freedom, security of person and property, and its other advantages. The results are so evident that it is unnecessary to say more.

If more has been said on the subject than may seem necessary, it has arisen from an anxiety to remove a common mistake, which is to substitute the effect for the cause; in supposing that the form of government in a country gives freedom and security; whereas it is the strength and prevalence of the requisites for public opinion that establish a liberal government and constitution, by which security of person and property are obtained.

A liberal form of government is, unquestionably, most desirable, even where the requisites for public opinion are not spread through the people; but its continuance, and the benefits arising from it in such a case, must be precarious *.

The sudden establishment of liberal institutions in a community where the requisites for public opinion were not general †, necessarily originated in a few persons

* A constitutional government established to-morrow in Turkey, might not last six months, the requisites for public opinion not being in existence. An arbitrary government, set up in Great Britain, would not last six days (unless forced on the people by conquest); because here the requisites for public opinion are so powerful, that such could not stand against the public opinion of the community. The same observation applies to other nations, according to the power or deficiency of public opinion.

† If an attempt had been made in the middle ages to establish a constitutional form of government in any part of Europe, it must have failed from the want of the requisites for public opinion. The people in every nation were ignorant, superstitious, and idle; public opinion was not in existence: this sentiment, therefore, could not enforce the establishment of free institutions, perceive their advantages, or retain them if obtained. How many individuals on the continent of Europe, in their attempts to establish liberty, have

only; it cannot, therefore, rest on a secure foundation, as it may require some time for the necessary requisites to spread through the people. Such an event, however, is always satisfactory as evidence that some, at least, are desirous to possess a liberal form of government. That public opinion renders the government * liberal, and establishes freedom, seems to follow, from the state of every community that has been mentioned.

become the victims of their ignorance of this want of public sentiment in the people!

In the days of ignorance, say three hundred years ago, a despotic government, in all the great nations of Europe, was the only one to be found. The situation of the people was such that they had no other resource. In all communities there must be some law, (any is better than none,) to prevent anarchy, to preserve the weak from the strong, to give a right to property, which was absolutely requisite. An individual was chosen, either the tallest, the bravest, or the strongest, or from whatever cause selected, uncontrolled power was given him over the others. The individual so elected, might be, and probably was, generally a tyrant: but his administration of the law, bad as it might be, was more beneficial to the people than no law whatever. Such a selection, and such a mode of government could only be adopted by a barbarous people; but they had no alternative, and preferred a bad government to none,—a ruler who tyrannized over some, to anarchy that might destroy all.

* The form of government in a community seems to depend on the proportion of the several classes to each other: if there is a large lower class, it has a tendency to despotism; if an extensive middle and upper class, to a constitutional monarchy; if a middle class without an upper one, to a republic.

In a civilized state, vice is more common than crime: it does not, however, follow, that vice is more prevalent than in a barbarous population without moral restraint. Amongst savages, the incitements to vice may not be so powerful, as in a luxurious and civilized community; but in the former the influence of moral principle is less than in the latter, which, perhaps, counterbalances the effects of wealth or idleness. If this seems too refined,

Thus it seems, that, in proportion as the requisites for public opinion become prevalent, and civilization is extended, individuals and communities are enabled not only to obtain and secure institutions that establish freedom, but also to apply the materials placed by Providence under their control, so as to promote the amelioration of their condition. What a difference between London as it now presents itself, and the few huts scattered on the same spot at the heptarchy! The same difference, it is probable, exists in the amount of the requisites for public opinion at present possessed by its inhabitants, and those of that period.

Man, in a savage state, seems little elevated above

let the influence of the passions on the uneducated and uncivilized be considered. If reference is made to the number of capital punishments in England in any one year of Henry VIII., it will appear they were ten times more numerous than in any one year in this century: the population of England is now five times as great; thus a proportion of fifty to one in favour of the unfrequency of crime of the present day.

Whenever an upper or middle class are numerous in proportion to the lower, the chance of want to the mass of the people, from an unfavourable season or other causes, seems less than where a lower class only is to be found. In the former case the superabundance and wealth of the two first classes serves as a sort of national granary, that may be applied to the relief of the lower class, in case of dearth or unusually high prices, if an importation of corn is allowed.

Supposing that Great Britain lost her commerce and her manufacturing industry, and depended only on her soil, it is evident such an alteration would be the reverse of what has been taking place for many years past. The upper and middle classes would then gradually diminish, and the lower augment in proportion. The stimulus to activity, however, is now too great even to apprehend such a result.

the brute creation, but the moral principle, though inert, is inherent in him: the materials afforded by nature are also quiescent around him. The former are elicited by the true principles of revealed religion, whence follow moral sentiment, and the other requisites for public opinion: the physical combinations required to mould the letter in his hands into substances for his use, follow almost as a matter of course.

It appears, therefore, that man, assisted by a proper religious principle, with the aid of his mental and physical powers brought into exertion, and well directed, rises into a superior state of existence.

THE END.

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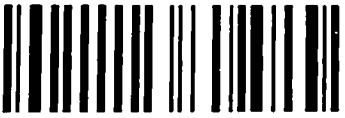
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